



PHOTO BY HORYDOZAK

# "THE SIGNING OF THE CONSTITUTION"

*From a painting in the Capitol at Washington, D.C., by Howard Chandler Christy*

# Drafting the Federal Constitution

A Rearrangement of Madison's Notes  
Giving Consecutive Developments of Provisions  
in the Constitution of the United States, Supple-  
mented by Documents Pertaining to the Philadel-  
phia Convention and to Ratification Processes, and  
Including Insertions by the Compiler

By

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## DEDICATION

THIS EFFORT TO MAKE THE WORK OF THE FOUNDERS MORE EFFECTIVE IN THE DEVELOPMENT OF CIVIC INTELLIGENCE IS DEDICATED TO THE MEMORY OF THOMAS DUCKETT BOYD, EXPONENT OF GOOD CITIZENSHIP, LOUISIANA'S OUTSTANDING STATESMAN OF PUBLIC EDUCATION FOR MORE THAN FORTY YEARS, LEADER IN THE ESTABLISHMENT OF THE SCHOOL SYSTEM ON PROFESSIONAL FOUNDATIONS, AND BUILDER OF THE STATE'S TWO OLDEST INSTITUTIONS FOR ADVANCED EDUCATION.



## PREFACE

The best guide to an understanding of the American federal system is Madison's Notes. This magnum opus of political documents is difficult to use for tracing the continuous development of propositions submitted to the Philadelphia Convention, because it is in essence a journal of proceedings portraying accurately deliberations on different subjects that occurred during each daily session. I have attempted to remove this difficulty by classifying the provisions of the completed Constitution on the basis of function and relationship, and rearranging Madison's record so as to show how each provision was consecutively evolved. Duplications of proceedings under this plan seem necessary to give encyclopedic completeness wherever structure and function are separately treated; otherwise scrappiness and detachment of parts would mar the purpose of the arrangement. It is hoped that this increased facility for the reader will make the processes and rationale of the drafters more accessible, and that use of this material will strengthen government of the people, by the people, for the people, in the United States by emphasizing the enduring principles incorporated in our supreme law.

This main purpose of the book is supplemented by the inclusion of sources from standard collections relative to the evolution of drafting machinery and ratification of the Constitution. In Part One the documents in Chapters 1 and 4, unlike Madison's Notes, are unedited and appear as they are printed in the 1927 edition of *Documents Illustrative of the Formation of the Union of the American States*, selected by Charles C. Tansill. Madison's Notes, which are only slightly

edited in Chapter 1, are based on E. H. Scott's *Journal of the Constitutional Convention Kept by James Madison*. Madison's Notes in Chapters 2 and 3, which take the Convention up to the date of the opening of the debates on June 19, and in Chapter 4, which deals with later developments in the House and in the committees, are taken basically from Galliard Hunt and James Brown Scott's *The Debates in the Federal Convention of 1787 Which Framed the Constitution of the United States of America, Reported by James Madison, A Delegate from the State of Virginia*, with modernizations by the compiler. *The Formation of the Union* and Scott's *Journal* are used as minor texts for the collation. In cases of questionable readings, the concurrence of two texts out of the three is accepted. Parts Two, Three, Four, and Five are a continuation of this scheme of editing Madison's Notes.

For the modernization of Madison's Notes, I have found E. H. Scott's edition of the *Journal* helpful. I have inserted my own explanations, comparisons, analyses, and evaluations wherever they promise to be helpful, and I have given citations and references for further reading.

The laborious task of typing material selected for this book and checking copy for the printer was efficiently performed by Mrs. Warren Hyner Carter, Secretary in the Department of History at Louisiana State University. Her patience and undiscouraged adherence to a tedious undertaking actually pulled it out of the Slough of Despond. The courtesy and generosity of Dr. Fred C. Frey, Dean of the College of Arts and Sciences, and Professor Walter Prichard, Head of the Department of History, who made arrangements for Mrs. Carter's indispensable services, have placed me under lasting obligations. I am grateful for the aid of Dr. Marcus M. Wilkerson, Director of the University Press, whose sympathetic conferences enabled me to hasten preparations for final publication.

A. T. P.

Baton Rouge, Louisiana  
September 17, 1940

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PART ONE  
HISTORIC FACTORS AND PROCESSES

INTRODUCTION

A volume designed to tell a consecutive story of how the federal Constitution was drafted by reproducing source material, selected and arranged so as to accomplish the end in view, would be incomplete without an introduction consisting of documents pertaining to conditions that brought drafting machinery into existence, and other material not properly included in a special study of what has been happily called the living Constitution, but necessary nevertheless to a perspective of drafting mechanisms and processes. Accordingly, material used for this purpose has been brought together as Part One of this volume, containing four chapters dealing with the evolution of drafting machinery, plans submitted to the Convention, stages in the development of the Virginia plan, and the ratification of the completed Constitution. To introduce selected documents, to provide yoking material, and to fill gaps, the compiler has used insertions of his own composition wherever they seemed helpful.





CHAPTER 1  
EVOLUTION OF DRAFTING MACHINERY

THE ANNAPOLIS CONVENTION

[The pressure of critical conditions under the Articles of Confederation, and the growing helplessness of the Congress to deal adequately with the situation, produced in every state a widespread conviction that a new constitutional system must be devised to secure an imperative governmental authority operating throughout the Union, without which complete disruption and disintegration were inevitable. Readers of American history are familiar with the cumulative effects of this constructive public opinion. Its best expression is found in the proceedings of the Annapolis Convention printed below.]

PROCEEDINGS OF COMMISSIONERS TO REMEDY  
EFFECTS OF THE FEDERAL GOVERNMENT

ANNAPOLIS IN THE STATE OF MARYLAND  
SEPTEMBER 11TH 1786

At a meeting of Commissioners, from the States of New York,  
New Jersey, Pennsylvania, Delaware and Virginia—

Present

|                    |              |
|--------------------|--------------|
| Alexander Hamilton | } New York   |
| Egbert Benson      |              |
| Abraham Clarke     | } New Jersey |
| William C. Houston |              |
| James Schuarman    |              |

|                       |              |
|-----------------------|--------------|
| Tench Coxe            | Pennsylvania |
| George Read           | } Delaware   |
| John Dickinson        |              |
| Richard Bassett       |              |
| Edmund Randolph       | } Virginia   |
| James Madison, Junior |              |
| Saint George Tucker   |              |

Mr. Dickinson was unanimously elected Chairman.

The Commissioners produced their Credentials from their respective States; which were read.

After a full communication of Sentiments, and deliberate consideration of what would be proper to be done by the Commissioners now assembled, it was unanimously agreed: that a Committee be appointed to prepare a draft of a Report to be made to the States having Commissioners attending at this meeting—Adjourned 'till Wednesday Morning.

WEDNESDAY SEPTEMBER 13TH 1786

Met agreeable to Adjournment.

The Committee, appointed for that purpose, reported the draft of the report; which being read, the meeting proceeded to the consideration thereof, and after some time spent therein, Adjourned 'till tomorrow Morning.

THURSDAY SEPT. 14TH 1786

Met agreeable to Adjournment.

The meeting resumed the consideration of the draft of the Report, and after some time spent therein, and amendments made, the same was unanimously agreed to, and is as follows, to wit.

*To the Honorable, the Legislatures of Virginia, Delaware, Pennsylvania, New Jersey, and New York—*

The Commissioners from the said States, respectively assembled at Annapolis, humbly beg leave to report.

That, pursuant to their several appointments, they met, at

Annapolis in the State of Maryland, on the eleventh day of September Instant, and having proceeded to a Communication of their powers; they found that the States of New York, Pennsylvania, and Virginia, had, in substance, and nearly in the same terms, authorised their respective Commissioners "to meet such Commissioners as were, or might be, appointed by the other States in the Union, at such time and place, as should be agreed upon by the said Commissioners to take into consideration the trade and Commerce of the United States, to consider how far an uniform system in their commercial intercourse and regulations might be necessary to their common interest and permanent harmony, and to report to the several States such an Act, relative to this great object, as when unanimously ratified by them would enable the United States in Congress assembled effectually to provide for the same."

That the State of Delaware, had given similar powers to their Commissioners, with this difference only, that the Act to be framed in virtue of those powers, is required to be reported "to the United States in Congress assembled, to be agreed to by them, and confirmed by the Legislatures of every State."

That the State of New Jersey had enlarged the object of their appointment, empowering their Commissioners, "to consider how far an uniform system in their commercial regulations and *other important matters*, might be necessary to the common interest and permanent harmony of the several States," and to report such an Act on the subject, as when ratified by them "would enable the United States in Congress assembled, effectually to provide for the exigencies of the Union."

That appointments of Commissioners have also been made by the States of New Hampshire, Massachusetts, Rhode Island, and North Carolina, none of whom however have attended; but that no information has been received by your Commissioners, of any appointment having been made by the States of Connecticut, Maryland, South Carolina or Georgia.

That the express terms of the powers to your Commissioners supposing a deputation from all the States, and having for object the Trade and Commerce of the United States, Your Commis-

sioners did not conceive it advisable to proceed on the business of their mission, under the Circumstance of so partial and defective a representation.

Deeply impressed however with the magnitude and importance of the object confided to them on this occasion, your Commissioners cannot forbear to indulge an expression of their earnest and unanimous wish, that speedy measures may be taken, to effect a general meeting, of the States, in a future Convention, for the same, and such other purposes, as the situation of public affairs, may be found to require.

If in expressing this wish, or in intimating any other sentiment, your Commissioners should seem to exceed the strict bounds of their appointment, they entertain a full confidence, that a conduct, dictated by an anxiety for the welfare, of the United States, will not fail to receive an indulgent construction.

In this persuasion, your Commissioners submit an opinion, that the Idea of extending the powers of their Deputies, to other objects, than those of Commerce, which has been adopted by the State of New Jersey, was an improvement on the original plan, and will deserve to be incorporated into that of a future Convention; they are the more naturally led to this conclusion, as in the course of their reflections on the subject, they have been induced to think, that the power of regulating trade is of such comprehensive extent, and will enter so far into the general System of the foederal government, that to give it efficacy, and to obviate questions and doubts concerning its precise nature and limits, may require a correspondent adjustment of other parts of the Foederal System.

That there are important defects in the system of the Foederal Government is acknowledged by the Acts of all those States, which have concurred in the present Meeting; That the defects, upon a closer examination, may be found greater and more numerous, than even these acts imply, is at least so far probable, from the embarrassments which characterise the present State of our national affairs, foreign and domestic, as may reasonably be supposed to merit a deliberate and candid discussion, in some

mode, which will unite the Sentiments and Councils of all the States. In the choice of the mode, your Commissioners are of opinion, that a Convention of Deputies from the different States, for the special and sole purpose of entering into this investigation, and digesting a plan for supplying such defects as may be discovered to exist, will be entitled to a preference from considerations, which will occur, without being particularised.

Your Commissioners decline an enumeration of those national circumstances on which their opinion respecting the propriety of a future Convention, with more enlarged powers, is founded; as it would be an useless intrusion of facts and observations, most of which have been frequently the subject of public discussion, and none of which can have escaped the penetration of those to whom they would in this instance be addressed. They are however of a nature so serious, as, in the view of your Commissioners to render the situation of the United States delicate and critical, calling for an exertion of the united virtue and wisdom of all the members of the Confederacy.

Under this impression, Your Commissioners, with the most respectful deference, beg leave to suggest their unanimous conviction, that it may essentially tend to advance the interests of the union, if the States, by whom they have been respectively delegated, would themselves concur, and use their endeavours to procure the concurrence of the other States, in the appointment of Commissioners, to meet at Philadelphia on the second Monday in May next, to take into consideration the situation of the United States, to devise such further provisions as shall appear to them necessary to render the constitution of the Foederal Government adequate to the exigencies of the Union; and to report such an Act for that purpose to the United States in Congress assembled, as when agreed to, by them, and afterwards confirmed by the Legislatures of every State, will effectually provide for the same.

Though your Commissioners could not with propriety address these observations and sentiments to any but the States they have the honor to Represent, they have nevertheless concluded from

motives of respect, to transmit Copies of this Report to the United States in Congress assembled, and to the executives of the other States.

By order of the Commissioners.

Dated at Annapolis }  
September 14th, 1786 }

Resolved, that the Chairman sign the foregoing Report in behalf of the Commissioners.

Then adjourned without day—

Egbt. Benson }  
Alexander Hamilton } New York

Abra: Clark }  
Wm. Chll. Houston } New Jersey  
Js. Schureman }

Tench Coxe } Pennsylvania

Geo: Read }  
John Dickinson } Delaware  
Richard Bassett }

Edmund Randolph }  
Js. Madison Jr. } Virginia  
St. George Tucker }

#### SUMMONING THE FEDERAL CONVENTION

[More than five months passed before Congress acted on the Annapolis recommendations. In the meanwhile, six states appointed delegates to the Convention; namely, Virginia, New Jersey, Pennsylvania, North Carolina, Delaware, and Georgia. The last obstacle to the calling of the Convention was removed by Congress whose action recorded in the proceedings of February 21, 1787, printed below, secured the sanction of the only body authorized by the Articles of Confederation to propose amendments to the organic law.]

## REPORT OF PROCEEDINGS IN CONGRESS,

WEDNESDAY FEBY. 21, 1787

Congress assembled as before.

The report of a grand commee. consisting of Mr. Dane Mr. Varnum Mr. S. M. Mitchell Mr. Smith Mr. Cadwallader Mr. Irwine Mr. N. Mitchell Mr. Forrest Mr. Grayson Mr. Blount Mr. Bull & Mr. Few, to whom was referred a letter of 14 Sept. 1786 from J. Dickinson written at the request of Commissioners from the States of Virginia Delaware Pennsylvania New Jersey & New York assembled at the City of Annapolis together with a copy of the report of the said commissioners to the legislatures of the States by whom they were appointed, being an order of the day was called up & which is contained in the following resolution viz

“Congress having had under consideration the letter of John Dickinson esqr. chairman of the Commissioners who assembled at Annapolis during the last year also the proceedings of the said commissioners and entirely coinciding with them as to the inefficiency of the federal government and the necessity of devising such farther provisions as shall render the same adequate to the exigencies of the Union do strongly recommend to the different legislatures to send forward delegates to meet the proposed convention on the second Monday in May next at the city of Philadelphia”

The delegates for the state of New York thereupon laid before Congress Instructions which they had received from their constituents, & in pursuance of the said instructions moved to postpone the farther consideration of the report in order to take up the following proposition to wit

“That it be recommended to the States composing the Union that a convention of representatives from the said States respectively be held at ——— on ——— for the purpose of revising the Articles of Confederation and perpetual Union between the United States of America and reporting to the United States in Congress assembled and to the States respectively such alterations



and amendments of the said Articles of Confederation as the representatives met in such convention shall judge proper and necessary to render them adequate to the preservation and support of the Union”

On the question to postpone for the purpose above mentioned the yeas & nays being required by the delegates for New York.

|                |                    |    |      |
|----------------|--------------------|----|------|
| Massachusetts  | Mr. King           | ay | } ay |
|                | Mr. Dane           | ay |      |
| Connecticut    | Mr. Johnson        | ay | } d  |
|                | Mr. S. M. Mitchell | no |      |
| New York       | Mr. Smith          | ay | } ay |
|                | Mr. Benson         | ay |      |
| New Jersey     | Mr. Cadwallader    | ay | } no |
|                | Mr. Clarke         | no |      |
|                | Mr. Schurman       | no |      |
| Pennsylvania   | Mr. Irwine         | no | } no |
|                | Mr. Meredith       | ay |      |
|                | Mr. Bingham        | no |      |
| Delaware       | Mr. N. Mitchell    | no | x    |
| Maryland       | Mr. Forest         | no | x    |
| Virginia       | Mr. Grayson        | ay | } ay |
|                | Mr. Madison        | ay |      |
| North Carolina | Mr. Blount         | no | } no |
|                | Mr. Hawkins        | no |      |
| South Carolina | Mr. Bull           | no | } no |
|                | Mr. Kean           | no |      |
|                | Mr. Huger          | no |      |
|                | Mr. Parker         | no |      |
| Georgia        | Mr. Few            | ay | } d  |
|                | Mr. Pierce         | no |      |

So the question was lost.

A motion was then made by the delegates for Massachusetts to postpone the farther consideration of the report in order to take into consideration a motion which they read in their place, this being agreed to, the motion of the delegates for Massachusetts was taken up and being amended was agreed to as follows

Whereas there is provision in the Articles of Confederation & perpetual Union for making alterations therein by the assent of a Congress of the United States and of the legislatures of the several States; And whereas experience hath evinced that there are defects in the present Confederation, as a mean to remedy which several of the States and particularly the State of New York by express instructions to their delegates in Congress have suggested a convention for the purposes expressed in the following resolution and such convention appearing to be the most probable mean of establishing in these states a firm national government.

Resolved that in the opinion of Congress it is expedient that on the second Monday in May next a Convention of delegates who shall have been appointed by the several states be held at Philadelphia for the sole and express purpose of revising the Articles of Confederation and reporting to Congress and the several legislatures such alterations and provisions therein as shall when agreed to in Congress and confirmed by the states render the federal constitution adequate to the exigencies of Government & the preservation of the Union.

#### APPOINTMENT OF DELEGATES

[All states except Rhode Island were represented in the Philadelphia Convention. In the selection of delegates they naturally followed the method used for the appointment of members of Congress under the Articles of Confederation. The documents printed below are typical credentials empowering state delegations to participate in the deliberations of the Convention.]

## VIRGINIA

GENERAL ASSEMBLY begun and held at the Public Buildings in the City of Richmond on Monday the sixteenth day of October in the Year of our Lord one thousand seven hundred and Eighty six

AN ACT for appointing Deputies from this Commonwealth to a Convention proposed to be held in the City of Philadelphia in May next for the purpose of revising the federal Constitution.

WHEREAS the Commissioners who assembled at Annapolis on the fourteenth day of September last for the purpose of devising and reporting the means of enabling Congress to provide effectually for the Commercial Interests of the United States have represented the necessity of extending the revision of the federal System to all it's defects and have recommended that Deputies for that purpose be appointed by the several Legislatures to meet in Convention in the City of Philadelphia on the second [Mon]day of May next a provision which was preferable to a discussion of the subject in Congress where it might be too much interrupted by the ordinary business before them and where it would besides be deprived of the valuable Counsels of sundry Individuals who are disqualified by the Constitution or Laws of particular States or restrained by peculiar circumstances from a Seat in that Assembly: AND WHEREAS the General Assembly of this Commonwealth taking into view the actual situation of the Confederacy as well as reflecting on the alarming representations made from time to time by the United States in Congress particularly in their Act of the fifteenth day of February last can no longer doubt that the Crisis is arrived at which the good People of America are to decide the solemn question whether they will by wise and magnanimous Efforts reap the just fruits of that Independence which they have so gloriously acquired and of that Union which they have cemented with so much of their common Blood, or whether by giving way to unmanly Jealousies and Prejudices or to partial and transitory Interests they will renounce the auspicious blessings prepared for them by the Revolution, and furnish to its Enemies an eventual Triumph over

those by whose virtue and valor it has been accomplished: AND WHEREAS the same noble and extended policy and the same fraternal and affectionate Sentiments which originally determined the Citizens of this Commonwealth to unite with their Bretheren of the other States in establishing a Foederal Government cannot but be Felt with equal force now as motives to lay aside every inferior consideration and to concur in such farther concessions and Provisions as may be necessary to secure the great Objects for which that Government was instituted and to render the *United States* as happy in peace as they have been glorious in War BE IT THEREFORE ENACTED by the General Assembly of the Commonwealth of Virginia that seven Commissioners be appointed by joint Ballot of both Houses of Assembly who or any three of them are hereby authorized as Deputies from this Commonwealth to meet such Deputies as may be appointed and authorized by other States to assemble in Convention at Philadelphia as above recommended and to join with them in devising and discussing all such Alterations and farther Provisions as may be necessary to render the Foederal Constitution adequate to the Exigencies of the Union and in reporting such an Act for that purpose to the United States in Congress as when agreed to by them and duly confirmed by the several States will effectually provide for the same. AND BE IT FURTHER ENACTED that in case of the death of any of the said Deputies or of their declining their appointments the Executive are hereby authorized to supply such Vacancies. AND the Governor is requested to transmit forthwith a Copy of this Act to the United States in Congress and to the Executives of each of the States in the Union.

Signed JOHN JONES Speaker of the Senate  
JOSEPH PRENTIS, Speaker of the  
House of Delegates

A true Copy from the Inrollment  
John Beckley Clk House Dels.

In the House of Delegates  
Monday the 4th of December 1786.

THE HOUSE according to the Order of the Day proceeded by

joint Ballot with the Senate to the appointment of Seven Deputies from this Commonwealth to a Convention proposed to be held in the City of Philadelphia in May next for the purpose of revising the Foederal Constitution, and the Members having prepared Tickets with the names of the Persons to be appointed, and deposited the same in the Ballot-boxes, Mr. Corbin, Mr. Matthews, Mr. David Stuart, Mr. George Nicholas, Mr. Richard Lee, Mr. Wills, Mr. Thomas Smith, Mr. Goodall and Mr. Turberville were nominated a Committee to meet a Committee from the Senate in the Conference-Chamber and jointly with them to examine the Ballot-boxes and report to the House on whom the Majority of Votes should fall. The Committee then withdrew and after some time returned into the House and reported that the Committee had, according to order, met a Committee from the Senate in the Conference-Chamber, and jointly with them examined the Ballot-boxes and found a majority of Votes in favor of George Washington, Patrick Henry, Edmund Randolph, John Blair, James Madison, George Mason and George Wythe Esquires.

Extract from the Journal,

JOHN BECKLEY Clk House Dels.

{ Attest JOHN BECKLEY }  
 { Clk. H. Dels. }

In the House of Senators

Monday the 4th of December 1786.

THE SENATE according to the Order of the Day proceeded by joint Ballot with the House of Delegates to the Appointment of Seven Deputies from this Commonwealth to a Convention proposed to be held in the City of Philadelphia in May next for the purpose of revising the Foederal Constitution, and the Members having prepared Tickets with the names of the Persons to be appointed, and deposited the same in the Ballot-boxes, Mr. Anderson, Mr. Nelson and Mr. Lee were nominated a Committee to meet a Committee from the House of Delegates in the Conference-Chamber and jointly with them to examine the Ballot-boxes

and report to the House on whom the Majority of Votes should fall. The Committee then withdrew and after some time returned into the House and reported that the Committee had, according to order, met a Committee from the House of Delegates in the Conference-Chamber, and jointly with them examined the Ballot-boxes and found a Majority of Votes in favor of George Washington, Patrick Henry Edmund Randolph, John Blair, James Madison George Mason and George Wythe Esquires.

Extract from the Journal

JOHN BECKLEY Clk, H. Ds.

Attest,

H. BROOK Clk S.

VIRGINIA TO WIT

(Seal)

I do Certify and make known, to all whom it may Concern, that John Beckley Esquire, is Clerk of the House of Delegates for this Commonwealth, and the proper Officer for attesting the proceedings of the General Assembly of the said Commonwealth. And that full Faith and Credit ought to be given to all things attested by the said John Beckley Esquire, by Virtue of his Office aforesaid.

Given under my hand as Governor of the Commonwealth of Virginia and under the Seal thereof, at Richmond this fourth day of May, one thousand seven hundred and Eighty seven.

EDM: RANDOLPH

VIRGINIA TO WIT.

(Seal)

I do hereby Certify, that Patrick Henry, Esquire, one of the seven Commissioners appointed by joint ballot of both Houses of Assembly of the Commonwealth of Virginia, authorized as a Deputy therefrom, to meet such Deputies as might be appointed and authorized by other States to assemble in Philadelphia and to join with them in devising and discussing all such Alterations and further Provisions, as might be necessary to

render the Foederal Constitution adequate to the exigencies of the Union; and in reporting such an Act for that purpose to the United States in Congress, as when agreed to by them and duly confirmed by the several States, might effectually provide for the same, did decline his appointment aforesaid; and thereupon in pursuance of an Act of the General Assembly of the said Commonwealth intituled "An Act for appointing Deputies from this Commonwealth to a Convention proposed to be held in the City of Philadelphia in May next, for the purpose of revising the Foederal Constitution" I do hereby with the advice of the Council of State, supply the said Vacancy by nominating James McClurg, Esquire, a Deputy for the Purposes aforesaid.

Given under my Hand as Governor of the said Commonwealth and under the Seal thereof this second day of May in the Year of our Lord One thousand seven hundred and eighty seven.

EDM: RANDOLPH

#### PENNSYLVANIA

An Act appointing Deputies to the Convention intended to be held in the City of Philadelphia for the purpose of revising the foederal Constitution.

Section 1st Whereas the General Assembly of this Commonwealth taking into their serious Consideration the Representations heretofore made to the Legislatures of the several States in the Union by the United States in Congress Assembled, and also weighing the difficulties under which the Confederated States now labour, are fully convinced of the necessity of revising the federal Constitution for the purpose of making such Alterations and amendments as the exigencies of our Public Affairs require. And Whereas the Legislature of the State of Virginia have already passed an Act of that Commonwealth empowering certain Commissioners to meet at the City of Philadelphia in May next, a Convention of Commissioners or Deputies from the different States; And the Legislature of this State are fully sensible of the important advantages which may be derived to the United States,

and every of them from co-operating with the Commonwealth of Virginia, and the other States of the Confederation in the said Design.

Section 2nd Be it enacted, and it is hereby enacted by the Representatives of the Freemen of the Commonwealth of Pensylvia in General Assembly met, and by the Authority of the same, That Thomas Mifflin, Robert Morris, George Clymer, Jared Ingersoll, Thomas Fitzsimmons, James Wilson and Gouverneur Morris Esquires, are hereby appointed Deputies from this State to meet in the Convention of the Deputies of the respective States of North America to be held at the City of Philadelphia on the second day of the Month of May next; And the said Thomas Mifflin, Robert Morris, George Clymer, Jared Ingersoll, Thomas Fitzsimmons, James Wilson and Gouverneur Morris Esquires, or any four of them, are hereby constituted and appointed Deputies from this State, with Powers to meet such Deputies as may be appointed and authorized by the other States, to assemble in the said Convention at the City aforesaid, and to join with them in devising, deliberating on, and discussing, all such alterations and further Provisions, as may be necessary to render the foederal Constitution fully adequate to the exigencies of the Union, and in reporting such Act or Acts for that purpose to the United States in Congress Assembled, as when agreed to by them and duly confirmed by the several States, will effectually provide for the same.

Section 3d And be it further enacted by the Authority aforesaid, That in case any of the sd Deputies hereby nominated, shall happen to die, or to resign his or their Appointment or Appointments, the Supreme Executive Council shall be and hereby are empowered and required, to nominate and appoint other Persons or Persons in lieu of him or them so deceased, or who has or have so resigned, which Person or Persons, from and after such Nomination and Appointment, shall be and hereby are declared to be vested with the same Powers respectively, as any of the Deputies Nominated and Appointed by this Act, is vested with by the same: Provided Always, that the Council are not



hereby authorised, nor shall they make any such Nomination or Appointment, except in Vacation and during the Recess of the General Assembly of this State.

Signed by Order of the House

{ Seal of the Laws }  
{ of Pennsylvania }

THOMAS MIFFLIN Speaker

Enacted into a Law at Philadelphia on Saturday December the thirtieth in the Year of our Lord one thousand seven hundred and Eighty six.

PETER ZACHARY LLOYD

Clerk of the General Assembly.

I Mathew Irwin Esquire Master of the Rolls for the State of Pennsylvania Do Certify the Preceding Writing to be a true Copy (or Exemplification) of a certain Act of Assembly lodged in my Office.

In Witness whereof I have hereunto set my Hand and Seal of Office the 15 May A. D. 1787.

(Seal.)

MATHW. IRWINE

M. R.

(Seal)

A Supplement to the Act entitled "An Act appointing Deputies to the Convention intended to be held in the City of Philadelphia for the purpose of revising the Federal Constitution.

Section 1st Whereas by the Act to which this Act is a Supplement, certain Persons were appointed as Deputies from this State to sit in the said Convention: And Whereas it is the desire of the General Assembly that His Excellency Benjamin Franklin Esquire, President of this State should also sit in the said Convention as a Deputy from this State—therefore

Section 2d Be it enacted and it is hereby enacted by the Representatives of the Freemen of the Commonwealth of Pennsylvania, in General Assembly met, and by the Authority of the same, that His Excellency Benjamin Franklin Esquire, be, and he is hereby, appointed and authorised to sit in the said Convention as a Deputy from this State in addition to the Persons heretofore

appointed; And that he be, and he hereby is invested with like Powers and authorities as are invested in the said Deputies or any of them.

Signed by Order of the House

THOMAS MIFFLIN Speaker.

Enacted into a Law at Philadelphia on Wednesday the twenty eighth day of March, in the Year of our Lord one thousand seven hundred & eighty seven.

PETER ZACHARY LLOYD

Clerk of the General Assembly.

I Mathew Irwine Esquire, Master of the Rolls for the State of Pennsylvania Do Certify the above to be a true Copy (or Exemplification) of a Supplement to a certain Act of Assembly which Supplement is lodged in my Office

In Witness whereof I have hereunto set my Hand and Seal of Office the 15 May Ao. D. 1787.

(Seal)

MATHW IRWINE

M. R.

#### STATE OF CONNECTICUT

(Seal.)

At a General Assembly of the State of Connecticut in America, holden at Hartford on the second Thursday of May, Anno Domini 1787.

An Act for appointing Delegates to meet in a Convention of the States to be held at the City of Philadelphia on the second Monday of May instant.

Whereas the Congress of the United States by their Act of the twenty first of February 1787 have recommended that on the second Monday of May instant, a Convention of Delegates, who shall have been appointed by the several States, be held at Philadelphia for the sole and express purpose of revising the Articles of Confederation.

Be it enacted by the Governor, Council and Representatives in General Court Assembled and by the Authority of the same.

That the Honorable William Samuel Johnson, Roger Sher-

man, and Oliver Ellsworth Esquires, be and they hereby are appointed Delegates to attend the said Convention, and are requested to proceed to the City of Philadelphia for that purpose without delay; And the said Delegates, and in case of sickness or accident, such one or more of them as shall actually attend the said Convention, is and are hereby authorized and empowered to Represent this State therein, and to confer with such Delegates appointed by the several States, for the purposes mentioned in the said Act of Congress that may be present and duly empowered to act in said Convention, and to discuss upon such Alterations and Provisions agreeable to the general Principles of Republican Government as they shall think proper to render the federal Constitution adequate to the exigencies of Government and, the preservation of the Union; And they are further directed, pursuant to the said Act of Congress to report such alterations and provisions as may be agreed to by a majority of the United States represented in Convention to the Congress of the United States, and to the General Assembly of this State.

A true Copy of Record

Examd

By GEORGE WYLLYS Secy.

LIST OF DELEGATES APPOINTED BY THE STATES  
REPRESENTED IN THE FEDERAL CONVENTION.

Reprinted from *Journal, Acts and Proceedings of the Convention which formed the Constitution of the United States*, John Quincy Adams, Editor.

| <i>From</i>    |                                               | <i>Attended</i>    |
|----------------|-----------------------------------------------|--------------------|
| New Hampshire. | 1. John Langdon,<br><i>John Pickering</i> ,   | July 23, 1787      |
|                | 2. Nicholas Gilman,<br><i>Benjamin West</i> . | July 23,           |
| Massachusetts. | <i>Francis Dana</i> ,<br>Elbridge Gerry,      | May 29,            |
|                | 3. Nathaniel Gorham,                          | May 28,            |
|                | 4. Rufus King,<br>Caleb Strong,               | May 25,<br>May 28, |

| <i>From</i>   |                          | <i>Attended</i> |
|---------------|--------------------------|-----------------|
| Rhode Island. | [No appointment.]        |                 |
| Connecticut.  | 5. Wm. Sam. Johnson,     | June 2,         |
|               | 6. Roger Sherman,        | May 30,         |
|               | Oliver Elsworth,         | May 29,         |
| New York.     | Robert Yates,            | May 25,         |
|               | 7. Alexander Hamilton,   | do.             |
|               | John Lansing,            | June 2,         |
| New Jersey.   | 8. William Livingston,   | June 5,         |
|               | 9. David Brearley,       | May 25,         |
|               | William C. Houston,      | do.             |
|               | 10. William Patterson,   | do.             |
|               | <i>John Neilson.</i>     |                 |
|               | <i>Abraham Clark.</i>    |                 |
|               | 11. Jonathan Dayton,     | June 21,        |
| Pennsylvania. | 12. Benjamin Franklin,   | May 28,         |
|               | 13. Thomas Mifflin,      | do.             |
|               | 14. Robert Morris,       | May 25,         |
|               | 15. George Clymer,       | May 28,         |
|               | 16. Thomas Fitzsimons,   | May 25,         |
|               | 17. Jared Ingersoll,     | May 28,         |
|               | 18. James Wilson,        | May 25,         |
|               | 19. Gouverneur Morris,   | do.             |
| Delaware.     | 20. George Read,         | do.             |
|               | 21. Gunning Bedford, jr. | May 28,         |
|               | 22. John Dickinson,      | May 28,         |
|               | 23. Richard Basset,      | May 25,         |
|               | 24. Jacob Broom,         | do.             |
| Maryland.     | 25. James M'Henry,       | May 29,         |
|               | 26. Daniel of St. Thomas |                 |
|               | Jenifer,                 | June 2,         |
|               | 27. Daniel Carroll,      | July 9,         |
|               | John Francis Mercer,     | Aug. 6,         |
|               | Luther Martin,           | June 9,         |
| Virginia.     | 28. George Washington,   | May 25,         |
|               | <i>Patrick Henry,</i>    | (declined.)     |
|               | Edmund Randolph,         | May 25,         |

| <i>From</i> |                             | <i>Attended</i> |
|-------------|-----------------------------|-----------------|
|             | 29. John Blair,             | do.             |
|             | 30. James Madison, jr       | do.             |
|             | George Mason,               | do.             |
|             | George Wythe,               | do.             |
|             | James M'Clurg, (in the      |                 |
|             | room of P. Henry)           | do.             |
| North       | <i>Richard Caswell,</i>     | (resigned.)     |
| Carolina.   | Alexander Martin,           | May 25.         |
|             | William R. Davie,           | do.             |
|             | 31. William Blount, (in the |                 |
|             | room of R. Caswell)         | June 20.        |
|             | <i>Willie Jones,</i>        | (declined.)     |
|             | 32. Richard D. Spaight,     | May 25.         |
|             | 33. Hugh Williamson (in the |                 |
|             | room of W. Jones)           | May 25.         |
| South       | 34. John Rutledge,          | do.             |
| Carolina.   | 35. Charles C. Pinckney,    | do.             |
|             | 36. Charles Pinckney,       | do.             |
|             | 37. Pierce Butler,          | do.             |
| Georgia.    | 38. William Few.            | do.             |
|             | 39. Abraham Baldwin,        | June 11,        |
|             | William Pierce,             | May 31.         |
|             | <i>George Walton.</i>       |                 |
|             | William Houstoun,           | June 1,         |
|             | <i>Nathaniel Pendleton.</i> |                 |

|                                                             |          |
|-------------------------------------------------------------|----------|
| Those with numbers before their names, signed the Constitu- |          |
| tion .....                                                  | 39       |
| Those in Italicks, never attended .....                     | 10       |
| Members who attended, but did not sign the Constitution ..  | 16       |
|                                                             | <hr/> 65 |

#### MEMBERS OF THE FEDERAL CONVENTION

[The author of the lively sketches reproduced below was a delegate from Georgia in the Philadelphia Convention. Little is known about his early life. He made an honorable record as

an officer in the revolutionary army, afterwards served as a member of the Congress of the Confederation, and left among his papers fragmentary notes on the proceedings of the Constitutional Convention. Business misfortunes called him away from the Convention and prevented his participation in deliberations during the last days of its session. The biographical comments in these sketches add nothing to our knowledge of the outstanding leaders, but contain valuable information about delegates who, notwithstanding the sound judgment recorded in their votes, might otherwise sink into oblivion.]

CHARACTERS IN THE CONVENTION OF THE STATES HELD AT  
PHILADELPHIA, MAY 1787.

[By William Pierce, Delegate from Georgia.]

From New Hampshire.

Jno. Langdon Esqr. and Nichs. Gilman Esquire.

Mr. Langdon is a Man of considerable fortune, possesses a liberal mind, and a good plain understanding.—about 40 years old.\*

Mr. Gilman is modest, genteel, and sensible. There is nothing brilliant or striking in his character, but there is something respectable and worthy in the Man.—about 30 years of age.

From Massachusetts.

Rufus King, Natl. Gorham, Gerry and Jno. Strong<sup>1</sup> Esquires.

Mr. King is a Man much distinguished for his eloquence and great parliamentary talents. He was educated in Massachusetts, and is said to have good classical as well as legal knowledge. He has served for three years in the Congress of the United States with great and deserved applause, and is at this time high in the confidence and approbation of his Country-men. This Gentleman is about thirty three years of age, about five feet ten Inches high, well formed, an handsome face, with a strong expressive

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\* Pierce's statements of age, throughout the paper, are only approximately correct.

<sup>1</sup> Caleb Strong.

Eye, and a sweet high toned voice. In his public speaking there is something peculiarly strong and rich in his expression, clear, and convincing in his arguments, rapid and irresistible at times in his eloquence but he is not always equal. His action is natural, swimming, and graceful, but there is a rudeness of manner sometimes accompanying it. But take him *tout en semble*, he may with propriety be ranked among the Luminaries of the present Age.

Mr. Gorham is a Merchant in Boston, high in reputation, and much in the esteem of his Country-men. He is a Man of very good sense, but not much improved in his education. He is eloquent and easy in public debate, but has nothing fashionable or elegant in his style;—all he aims at is to convince, and where he fails it never is from his auditory not understanding him, for no Man is more perspicuous and full. He has been President of Congress, and three years a Member of that Body. Mr. Gorham is about 46 years of age, rather lusty, and has an agreeable and pleasing manner.

Mr. Gerry's character is marked for integrity and perseverance. He is a hesitating and laborious speaker;—possesses a great degree of confidence and goes extensively into all subjects that he speaks on, without respect to elegance or flower of diction. He is connected and sometimes clear in his arguments, conceives well, and cherishes as his first virtue, a love for his Country. Mr. Gerry is very much of a Gentleman in his principles and manners;—he has been engaged in the mercantile line and is a Man of property. He is about 37 years of age.

Mr. Strong is a Lawyer of some eminence,—he has received a liberal education, and has good connections to recommend him. As a Speaker he is feeble, and without confidence. This Gentl. is about thirty five years of age, and greatly in the esteem of his Colleagues.

From Connecticut.

Saml. Johnson, Roger Sherman, and W. Elsworth<sup>2</sup> Esquires.

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<sup>2</sup> Oliver Ellsworth.

Dr. Johnson is a character much celebrated for his legal knowledge; he is said to be one of the first classics in America, and certainly possesses a very strong and enlightened understanding.

As an Orator in my opinion, there is nothing in him that warrants the high reputation which he has for public speaking. There is something in the tone of his voice not pleasing to the Ear,—but he is eloquent and clear,—always abounding with information and instruction. He was once employed as an Agent for the State of Connecticut to state her claims to certain landed territory before the British House of Commons; this Office he discharged with so much dignity, and made such an ingenious display of his powers, that he laid the foundation of a reputation which will probably last much longer than his own life. Dr. Johnson is about sixty years of age, possesses the manners of a Gentleman, and engages the Hearts of Men by the sweetness of his temper, and that affectionate style of address with which he accosts his acquaintance.

Mr. Sherman exhibits the oddest shaped character I ever remember to have met with. He is awkward, un-meaning, and unaccountably strange in his manner. But in his train of thinking there is something regular, deep, and comprehensive; yet the oddity of his address, the vulgarisms that accompany his public speaking, and that strange new England cant which runs through his public as well as his private speaking make everything that is connected with him grotesque and laughable;—and yet he deserves infinite praise,—no Man has a better Heart or a clearer Head. If he cannot embellish he can furnish thoughts that are wise and useful. He is an able politician, and extremely artful in accomplishing any particular object;—it is remarked that he seldom fails. I am told he sits on the Bench in Connecticut, and is very correct in the discharge of his Judicial functions. In the early part of his life he was a Shoe-maker;—but despising the lowness of his condition, he turned Almanack maker, and so progressed upwards to a Judge. He has been several years a Member of Congress, and discharged the duties of his Office with honor and credit to himself, and advantage to the State he represented. He is about 60.



Mr. Elsworth is a Judge of the Supreme Court in Connecticut;—he is a Gentleman of a clear, deep, and copious understanding; eloquent, and connected in public debate; and always attentive to his duty. He is very happy in a reply, and choice in selecting such parts of his adversary's arguments as he finds makes the strongest impressions,—in order to take off the force of them, so as to admit the power of his own. Mr. Elsworth is about 37 years of age, a Man much respected for his integrity, and venerated for his abilities.

From New York.

Alexander Hamilton,      Yates, and W. Lansing <sup>3</sup> Esquires.

Colo. Hamilton is deservedly celebrated for his talents. He is a practitioner of the Law, and reputed to be a finished Scholar. To a clear and strong judgment he unites the ornaments of fancy, and whilst he is able, convincing, and engaging in his eloquence the Heart and Head sympathize in approving him. Yet there is something too feeble in his voice to be equal to the strains of oratory;—it is my opinion that he is rather a convincing Speaker, that [than] a blazing Orator. Colo. Hamilton requires time to think,—he enquires into every part of his subject with the searching of philosophy, and when he comes forward he comes highly charged with interesting matter, there is no skimming over the surface of a subject with him, he must sink to the bottom to see what foundation it rests on.—His language is not always equal, sometimes didactic like Bolingbroke's, at others light and tripping like Stern's. His eloquence is not so defusive as to trifle with the senses, but he rambles just enough to strike and keep up the attention. He is about 33 years old, of small stature, and lean. His manners are tinctured with stiffness, and sometimes with a degree of vanity that is highly disagreeable.

Mr. Yates is said to be an able Judge. He is a Man of great legal abilities, but not distinguished as an Orator. Some of his Enemies say he is an anti-federal Man, but I discovered no such disposition in him. He is about 45 years old, and enjoys a great share of health.

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<sup>3</sup> John Lansing.

Mr. Lansing is a practicing Attorney at Albany, and Mayor of that Corporation. He has a hisitation in his speech, that will prevent his being an Orator of any eminence;—his legal knowledge I am told is not extensive, nor his education a good one. He is however a Man of good sense, plain in his manners, and sincere in his friendships. He is about 32 years of age.

From New Jersey.<sup>4</sup>

Wm. Livingston, David Brearly, Wm. Patterson, and Jonn. Dayton, Esquires.

Governor Livingston is confessedly a Man of the first rate talents, but he appears to me rather to indulge a sportiveness of wit, than a strength of thinking. He is however equal to anything, from the extensiveness of his education and genius. His writings teem with satyr and a neatness of style. But he is no Orator, and seems little acquainted with the guiles of policy. He is about 60 years old, and remarkably healthy.

Mr. Brearly is a man of good, rather than of brilliant parts. He is a Judge of the Supreme Court of New Jersey, and is very much in the esteem of the people. As an Orator he has little to boast of, but as a Man he has every virtue to recommend him. Mr. Brearly is about 40 years of age.

Mr. Patterson is one of those kind of Men whose powers break in upon you, and create wonder and astonishment. He is a Man of great modesty, with looks that bespeak talents of no great extent,—but he is a Classic, a Lawyer, and an Orator;—and of a disposition so favorable to his advancement that every one seemed ready to exalt him with their praises. He is very happy in the choice of time and manner of engaging in a debate, and never speaks but when he understands his subject well. This Gentleman is about 34 ys. of age, of a very low stature.

Capt. Dayton is a young Gentleman of talents, with ambition to exert them. He possesses a good education and some reading; he speaks well, and seems desirous of improving himself in Oratory. There is an impetuosity in his temper that is injurious to him; but there is an honest rectitude about him that makes him

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<sup>4</sup> W. C. Houston omitted.

a valuable Member of Society, and secures to him the esteem of all good Men. He is about 30 years old, served with me as a Brother Aid to General Sullivan in the Western expedition of '79.

From Pennsylvania.

Benja. Franklin, Thos. Mifflin, Robt. Morris, Geo. Clymer, Thomas Fitzsimons, Jared Ingersol, James Wilson, Gouverneur Morris.

Dr. Franklin is well known to be the greatest philosopher of the present age;—all the operations of nature he seems to understand,—the very heavens obey him, and the Clouds yield up their Lightning to be imprisoned in his rod. But what claim he has to the politician, posterity must determine. It is certain that he does not shine much in public Council,—he is no Speaker, nor does he seem to let politics engage his attention. He is, however, a most extraordinary Man, and tells a story in a style more engaging than anything I ever heard. Let his Biographer finish his character. He is 82 years old, and possesses an activity of mind equal to a youth of 25 years of age.

General Mifflin is well known for the activity of his mind, and the brilliancy of his parts. He is well informed and a graceful Speaker. The General is about 40 years of age, and a very handsome man.

Robert Morris is a merchant of great eminence and wealth; an able Financier, and a worthy Patriot. He has an understanding equal to any public object, and possesses an energy of mind that few Men can boast of. Although he is not learned, yet he is as great as those who are. I am told that when he speaks in the Assembly of Pennsylvania, that he bears down all before him. What could have been his reason for not Speaking in the Convention I know not,—but he never once spoke on any point. This Gentleman is about 50 years old.

Mr. Clymer is a lawyer of some abilities;—he is a respectable Man, and much esteemed. Mr. Clymer is about 40 years old.

Mr. Fitzsimons is a Merchant of considerable talents, and speaks very well I am told, in the Legislature of Pennsylvania. He is about 40 years old.

Mr. Ingersol is a very able Attorney, and possesses a clear legal understanding. He is well educated in the Classic's, and is a Man of very extensive reading. Mr. Ingersol speaks well, and comprehends his subject fully. There is a modesty in his character that keeps him back. He is about 36 years old.

Mr. Wilson ranks among the foremost in legal and political knowledge. He has joined to a fine genius all that can set him off and show him to advantage. He is well acquainted with Man, and understands all the passions that influence him. Government seems to have been his peculiar Study, all the political institutions of the World he knows in detail, and can trace the causes and effects of every revolution from the earliest stages of the Grecian commonwealth down to the present time. No man is more clear, copious, and comprehensive than Mr. Wilson, yet he is no great Orator. He draws the attention not by the charm of his eloquence, but by the force of his reasoning. He is about 45 years old.

Mr. Gouverneur<sup>5</sup> Morris is one of those Genius's in whom every species of talents combine to render him conspicuous and flourishing in public debate:—He winds through all the mazes of rhetoric, and throws around him such a glare that he charms, captivates, and leads away the senses of all who hear him. With an infinite stretch of fancy he brings to view things when he is engaged in deep argumentation, that render all the labor of reasoning easy and pleasing. But with all these powers he is fickle and inconstant,—never pursuing one train of thinking,—nor ever regular. He has gone through a very extensive course of reading, and is acquainted with all the sciences. No Man has more wit,—nor can any one engage the attention more than Mr. Morris. He was bred to the Law, but I am told he disliked the profession, and turned Merchant. He is engaged in some great mercantile matters with his namesake Mr. Robt. Morris. This Gentleman is about 38 years old, he has been unfortunate in losing one of his Legs, and getting all the flesh taken off his right arm by a scald, when a youth.

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<sup>5</sup> [Gouverneur.]

From Delaware.

Jno. Dickinson, Gunning Bedford, Geo: Read, Richd. Bassett, and Jacob Broom Esquires.

Mr. Dickinson has been famed through all America, for his Farmers Letters; he is a Scholar, and said to be a Man of very extensive information. When I saw him in the Convention I was induced to pay the greatest attention to him whenever he spoke. I had often heard that he was a great Orator, but I found him an indifferent Speaker. With an affected air of Wisdom he labors to produce a trifle,—his language is irregular and incorrect,—his flourishes, (for he sometimes attempts them), are like expiring flames, they just shew themselves and go out;—no traces of them are left on the mind to cheer or animate it. He is, however, a good writer and will be ever considered one of the most important characters in the United States. He is about 55 years old, and was bred a Quaker.

Mr. Bedford was educated for the Bar, and in his profession I am told, has merit. He is a bold and nervous Speaker, and has a very commanding and striking manner;—but he is warm and impetuous in his temper, and precipitate in his judgment. Mr. Bedford is about 32 years old, and very corpulent.

Mr. Read is a Lawyer and a Judge;—his legal abilities are said to be very great, but his powers of Oratory are fatiguing and tiresome to the last degree;—his voice is feeble, and his articulation so bad that few can have patience to attend to him. He is a very good Man, and bears an amiable character with those who know him. Mr. Read is about 50, of a low stature, and a weak constitution.

Mr. Bassett is a religious enthusiast, lately turned Methodist, and serves his Country because it is the will of the people that he should do so. He is a Man of plain sense, and has modesty enough to hold his Tongue. He is a Gentlemanly Man, and is in high estimation among the Methodists. Mr. Bassett is about 36 years old.

Mr. Broom is a plain good Man, with some abilities, but nothing to render him conspicuous. He is silent in public, but cheerful and conversable in private. He is about 35 years old.

From Maryland.<sup>6</sup>

Luther Martin, Jas. McHenry, Daniel of St. Thomas Jenifer, and Daniel Carrol Esquires.

Mr. Martin was educated for the Bar, and is Attorney general for the State of Maryland. This Gentleman possesses a good deal of information, but he has a very bad delivery, and so extremely prolix, that he never speaks without tiring the patience of all who hear him. He is about 34 years of age.

Mr. McHenry was bred a physician, but he afterwards turned Soldier and acted as Aid to Genl. Washington and the Marquis de la Fayette. He is a Man of specious talents, with nothing of genious to improve them. As a politician there is nothing remarkable in him, nor has he any of the graces of the Orator. He is however, a very respectable young Gentleman, and deserves the honor which his Country has bestowed on him. Mr. McHenry is about 32 years of age.

Mr. Jenifer is a Gentleman of fortune in Maryland;—he is always in good humour, and never fails to make his company pleased with him. He sits silent in the Senate, and seems to be conscious that he is no politician. From his long continuance in single life, no doubt but he has made the vow of celibacy. He speaks warmly of the Ladies notwithstanding. Mr. Jenifer is about 55 years of Age, and once served as an Aid de Camp to Major Genl. Lee.

Mr. Carrol is a Man of large fortune, and influence in his State. He possesses plain good sense, and is in the full confidence of his Countrymen. This Gentleman is about      years of age.

From Virginia.

Genl. Geo: Washington, Geo: Wythe, Geo: Mason, Jas. Madison junr. Jno. Blair, Edmd. Randolph, and James McClurg.<sup>7</sup>

Genl. Washington is well known as the Commander in chief of the late American Army. Having conducted these States to independence and peace, he now appears to assist in framing a Government to make the People happy. Like Gustavus Vasa,

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<sup>6</sup> James Francis Mercer omitted.

<sup>7</sup> McClurg.

he may be said to be the deliverer of his Country;—like Peter the great he appears as the politician and the States-man; and like Cincinnatus he returned to his farm perfectly contented with being only a plain Citizen, after enjoying the highest honor of the Confederacy,—and now only seeks for the approbation of his Countrymen by being virtuous and useful. The General was conducted to the Chair as President of the Convention by the unanimous voice of its Members. He is in the 52d. year of his age.

Mr. Wythe is the famous Professor of Law at the University of William and Mary. He is confessedly one of the most learned legal Characters of the present age. From his close attention to the study of general learning he has acquired a compleat knowledge of the dead languages and all the sciences. He is remarked for his exemplary life, and universally esteemed for his good principles. No Man it is said understands the history of Government better than Mr. Wythe,—nor any one who understands the fluctuating condition to which all societies are liable better than he does, yet from his too favorable opinion of Men, he is no great politician. He is a neat and pleasing Speaker, and a most correct and able Writer. Mr. Wythe is about 55 years of age.

Mr. Mason is a Gentleman of remarkable strong powers, and possesses a clear and copious understanding. He is able and convincing in debate, steady and firm in his principles, and undoubtedly one of the best politicians in America. Mr. Mason is about 60 years old, with a fine strong constitution.

Mr. Maddison is a character who has long been in public life; and what is very remarkable every Person seems to acknowledge his greatness. He blends together the profound politician, with the Scholar. In the management of every great question he evidently took the lead in the Convention, and tho' he cannot be called an Orator, he is a most agreeable, eloquent, and convincing Speaker. From a spirit of industry and application which he possesses in a most eminent degree, he always comes forward the best informed Man of any point in debate. The affairs of the United States, he perhaps, has the most correct knowledge of,

of any Man in the Union. He has been twice a Member of Congress, and was always thought one of the ablest Members that ever sat in that Council. Mr. Maddison is about 37 years of age, a Gentleman of great modesty,—with a remarkable sweet temper. He is easy and unreserved among his acquaintance, and has a most agreeable style of conversation.

Mr. Blair is one of the most respectable Men in Virginia, both on account of his Family as well as fortune. He is one of the Judges of the Supreme Court in Virginia, and acknowledged to have a very extensive knowledge of the Laws. Mr. Blair is however, no Orator, but his good sense, and most excellent principles, compensate for other deficiencies. He is about 50 years of age.

Mr. Randolph is Governor of Virginia,—a young Gentleman in whom unite all the accomplishments of the Scholar, and the Statesman. He came forward with the postulata, or first principles, on which the Convention acted, and he supported them with a force of eloquence and reasoning that did him great honor. He has a most harmonious voice, a fine person and striking manners.

Mr. Randolph is about 32 years of age.

Mr. McLurg is a learned physician, but having never appeared before in public life his character as a politician is not sufficiently known. He attempted once or twice to speak, but with no great success. It is certain that he has a foundation of learning, on which, if he pleases, he may erect a character of high renown. The Doctor is about 38 years of age, a Gentleman of great respectability, and of a fair and unblemished character.

North Carolina.

Wm. Blount, Richd. Dobbs Spaight, Hugh Williamson, Wm. Davey, and Jno. Martin <sup>s</sup> Esquires.

Mr. Blount is a character strongly marked for integrity and honor. He has been twice a Member of Congress, and in that office discharged his duty with ability and faithfulness. He is no

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<sup>s</sup> *Alexander Martin.*



Speaker, nor does he possess any of those talents that make Men shine;—he is plain, honest, and sincere. Mr. Blount is about 36 years of age.

Mr. Spaight is a worthy Man, of some abilities, and fortune. Without possessing a Genius to render him brilliant, he is able to discharge any public trust that his Country may repose in him. He is about 31 years of age.

Mr. Williamson is a Gentleman of education and talents. He enters freely into public debate from his close attention to most subjects, but he is no Orator. There is a great degree of good humour and pleasantry in his character; and in his manners there is a strong trait of the Gentleman. He is about 48 years of age.

Mr. Davey is a Lawyer of some eminence in his State. He is said to have a good classical education, and is a Gentleman of considerable literary talents. He was silent in the Convention, but his opinion was always respected. Mr. Davy is about 30 years of age.

Mr. Martin was lately Governor of North Carolina, which office he filled with credit. He is a Man of sense, and undoubtedly is a good politician, but he is not formed to shine in public debate, being no Speaker. Mr. Martin was once a Colonel in the American Army, but proved unfit for the field. He is about 40 years of age.

South Carolina.

Jno. Rutledge, Chs. Cotesworth Pinckney, Charles Pinckney, and Pierce Butler Esquires.

Mr. Rutledge is one of those characters who was highly mounted at the commencement of the late revolution;—his reputation in the first Congress gave him a distinguished rank among the American Worthies. He was bred to the Law, and now acts as one of the Chancellors of South Carolina. This Gentleman is much famed in his own State as an Orator, but in my opinion he is too rapid in his public speaking to be denominated an agreeable Orator. He is undoubtedly a man of abilities, and a Gentleman of distinction and fortune. Mr. Rutledge was once Governor of South Carolina. He is about 48 years of age.

Mr. Chs. Cotesworth Pinckney is a Gentleman of Family and fortune in his own State. He has received the advantage of a liberal education, and possesses a very extensive degree of legal knowledge. When warm in a debate he sometimes speaks well, —but he is generally considered an indifferent Orator. Mr. Pinckney was an Officer of high rank in the American Army, and served with great reputation through the War. He is now about 40 years of age.

Mr. Charles Pinckney is a young Gentleman of the most promising talents. He is, altho' only 24 ys. of age, in possession of a very great variety of knowledge. Government, Law, History and Phylosophy are his favorite studies, but he is intimately acquainted with every species of polite learning, and has a spirit of application and industry beyond most men. He speaks with great neatness and perspicuity, and treats every subject as fully, without running into prolixity, as it requires. He has been a member of Congress, and served in that Body with ability and eclat.

Mr. Butler is a character much respected for the many excellent virtues which he possesses. But as a politician or an Orator, he has no pretensions to either. He is a Gentleman of fortune, and takes rank among the first in South Carolina. He has been appointed to Congress, and is now a Member of the Legislature of South Carolina. Mr. Butler is about 40 years of age; an Irishman by birth.

For Georgia.

Wm. Few, Abraham Baldwin, Wm. Pierce, and Wm. Houstoun Esqrs.

Mr. Few possesses a strong natural Genius, and from application has acquired some knowledge of legal matters;—he practises at the bar of Georgia, and speaks tolerably well in the Legislature. He has been twice a Member of Congress, and served in that capacity with fidelity to his State, and honor to himself. Mr. Few is about 35 years of age.

Mr. Baldwin is a Gentleman of superior abilities, and joins in a public debate with great art and eloquence. Having laid the foundation of a compleat classical education at Harvard Col-

lege, he pursues every other study with ease. He is well acquainted with Books and Characters, and has an accomodating turn of mind, which enables him to gain the confidence of Men, and to understand them. He is a practising Attorney in Georgia, and has been twice a Member of Congress. Mr. Baldwin is about 38 years of age.

Mr. Houstoun is an Attorney at Law, and has been Member of Congress for the State of Georgia. He is a Gentleman of Family, and was educated in England. As to his legal or political knowledge he has very little to boast of. Nature seems to have done more for his corporeal than mental powers. His Person is striking, but his mind very little improved with useful or elegant knowledge. He has none of the talents requisite for the Orator, but in public debate is confused and irregular. Mr. Houstoun is about 30 years of age of an amiable and sweet temper, and of good and honorable principles.

My own character I shall not attempt to draw, but leave those who may choose to speculate on it, to consider it in any light that their fancy or imagination may depict. I am conscious of having discharged my duty as a Soldier through the course of the late revolution with honor and propriety; and my services in Congress and the Convention were bestowed with the best intention towards the interest of Georgia, and towards the general welfare of the Confederacy. I possess ambition, and it was that, and the flattering opinion which some of my Friends had of me, that gave me a seat in the wisest Council in the World, and furnished me with an opportunity of giving these short Sketches of the Characters who composed it.

#### QUORUM, OFFICERS AND RULES OF THE ASSEMBLED CONVENTION

[The documentary reproductions given under this heading are taken from Madison's Notes. Delegates in Philadelphia from large states awaiting the presence of a quorum seriously proposed the denial of equal voting power to states represented in the Convention, urging instead a population basis. This movement was wisely discountenanced by the Virginia delegation,

because it threatened dangerous bickering at the very beginning of the Convention's session, and so it was tacitly agreed that a quorum should consist of a majority of states represented, each to have one vote. The processes of organizing the Convention and adopting rules of procedure are clearly shown by the extracts printed below.]

## QUORUM

MONDAY, MAY 14TH, 1787,

Was the day fixed for the meeting of the Deputies in Convention, for revising the federal system of government. On that day a small number only had assembled. Seven States were not convened till,

FRIDAY, MAY 25TH.

When the following members appeared:

From

Massachusetts,

Rufus King.

New York,

Robert Yates, and  
Alexander Hamilton.

New Jersey,

David Brearl[e]y,  
William Churchill Houston, and  
William Patterson [Paterson].

Pennsylvania,

Robert Morris,  
Thomas Fitzsimons,  
James Wilson, and  
Gouverneur Morris.

Delaware,

George Read,  
Richard Basset[t], and  
Jacob Broom.

Virginia,

George Washington,  
Edmund Randolph,  
John Blair,  
James Madison,  
George Mason  
George Wythe, and  
James McClurg.

|                 |                                                                                                  |
|-----------------|--------------------------------------------------------------------------------------------------|
| North Carolina, | Alexander Martin,<br>William Richardson Davie,<br>Richard Dobbs Spaight, and<br>Hugh Williamson. |
| South Carolina, | John Rutledge,<br>Charles Cotesworth Pinckney,<br>Charles Pinckney, and<br>Pierce Butler.        |
| Georgia,        | William Few.                                                                                     |

## OFFICERS OF THE CONVENTION

- May 25* Robert Morris: Informed the members assembled, that, by the instruction and in behalf of the deputation of Pennsylvania, he proposed George Washington, Esquire, late Commander-in-Chief, for President of the Convention.
- John Rutledge: Seconded the motion, expressing his confidence that the choice would be unanimous; and observing, that the presence of General Washington forbade any observations on the occasion which might otherwise be proper.
- General Washington was accordingly unanimously elected by ballot, and conducted to the Chair by Mr. R. Morris and Mr. Rutledge; from which, in a very emphatic manner, he thanked the Convention for the honor they had conferred on him; reminded them of the novelty of the scene of business in which he was to act, lamented his want of better qualifications, and claimed the indulgence of the House towards the involuntary errors which his inexperience might occasion.
- Wilson: Moved that a Secretary be appointed, and nominated Mr. Temple Franklin.
- Hamilton: Nominated Major Jackson.
- On the ballot Major Jackson had five votes, and Mr. Franklin two votes.

## RULES OF THE CONVENTION

- May 25* The appointment of a Committee, on the motion of Mr. C. Pinckney, consisting of Messrs. Wythe, Hamilton, and C.

Pinckney, to prepare standing rules and orders, was the only remaining step taken on this day.

Wythe: From the Committee for preparing rules, made a report, May 28  
which employed the deliberations of this day.

King: Objected to one of the rules in the report authorizing any member to call for the Yeas and Nays and have them entered on the minutes. He urged that as the acts of the Convention were not to bind the constituents, it was unnecessary to exhibit this evidence of the votes; and improper, as changes of opinion would be frequent in the course of the business, and would fill the minutes with contradictions.

Mason: Seconded the objection, adding that such a record of the opinions of members would be an obstacle to a change of them on conviction; and in case of its being hereafter promulgated, must furnish handles to the adversaries of the result of the meeting.

The proposed rule was rejected, *nem. con.* The standing rules agreed to were as follows:

A House to do business shall consist of the Deputies of not less than seven States; and all questions shall be decided by the greater number of these which shall be fully represented. But a less number than seven may adjourn from day to day.

Immediately after the President shall have taken the Chair, and the members their seats, the minutes of the preceding day shall be read by the Secretary.

Every member, rising to speak, shall address the President; and, whilst he shall be speaking, none shall pass between them, or hold discourse with another, or read a book, pamphlet, or paper, printed or manuscript. And of two members rising to speak at the same time, the President shall name him who shall be first heard.

A member shall not speak oftener than twice, without special leave, upon the same question; and not the second time, before every other who had been silent shall have been heard, if he choose to speak upon the subject.

A motion, made and seconded, shall be repeated, and, if

written, as it shall be when any member shall so require, read aloud, by the Secretary, before it shall be debated; and may be withdrawn at any time before the vote upon it shall have been declared.

Orders of the day shall be read next after the minutes; and either discussed or postponed, before any other business shall be introduced.

When a debate shall arise upon a question, no motion, other than to amend the question, to commit it, or to postpone the debate, shall be received.

A question which is complicated shall, at the request of any member, be divided, and put separately upon the propositions of which it is compounded.

The determination of a question, although fully debated, shall be postponed, if the Deputies of any State desire it, until the next day.

A writing which contains any matter brought on to be considered shall be read once throughout, for information; then by paragraphs, to be debated; and again, with the amendments, if any, made on the second reading; and afterwards the question shall be put upon the whole, amended, or approved in its original form, as the case shall be.

Committees shall be appointed by ballot; and the members who have the greatest number of ballots, although not a majority of the votes present, shall be the Committee. When two or more members have an equal number of votes, the member standing first on the list, in the order of taking down the ballots, shall be preferred.

A member may be called to order by any other member, as well as by the President; and may be allowed to explain his conduct, or expressions supposed to be reprehensible. And all questions of order shall be decided by the President, without appeal or debate.

Upon a question to adjourn, for the day, which may be made at any time, if it be seconded, the question shall be put without a debate.

When the House shall adjourn, every member shall stand in his place until the President pass him.<sup>9</sup>

Butler: Moved that the House provide against interruption of business by absence of members, and against licentious publications of their proceedings.

Spaight: Added a motion to provide that, on the one hand, the House might not be precluded by a vote upon any question from revising the subject matter of it, when they see cause, nor, on the other hand, be led too hastily to rescind a decision which was the result of mature discussion. Whereupon it was ordered that these motions be referred for the consideration of the Committee appointed to draw up the standing rules, and that the Committee make report thereon.

The following rules were added, on the report of Mr. Wythe, *May 29*  
from the Committee:

That no member be absent from the House, so as to interrupt the representation of the State, without leave.

That committees do not sit whilst the House shall be, or ought to be, sitting.

That no copy be taken of any entry on the Journal during the sitting of the House, without leave of the House.

That members only be permitted to inspect the Journal.

That nothing spoken in the House be printed, or otherwise published, or communicated without leave.

That a motion to reconsider a matter which has been de-

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<sup>9</sup> Previous to the arrival of a majority of the States, the rule by which they ought to vote in the Convention had been made a subject of conversation among the members present. It was pressed by Gouverneur Morris, and favored by Robert Morris and others from Pennsylvania, that the large states should unite in firmly refusing to the small States an equal vote, as unreasonable, and as enabling the small states to negative every good system of government, which must, in the nature of things, be founded on a violation of that equality. The members from Virginia, conceiving that such an attempt might beget fatal altercations between the large and small states; and that it would be easier to prevail on the latter in the course of the deliberations to give up their equality for the sake of an effective government, than on taking the field of discussion to disarm themselves of the right and thereby throw themselves on the mercy of the larger states, discountenanced and stifled the project.



terminated by a majority, may be made, with leave, unanimously given, on the same day on which the vote passed; but otherwise, not without one day's previous notice; in which last case, if the House agree to the reconsideration, some future day shall be assigned for that purpose.

#### COMMITTEES OF THE CONVENTION

[Insertion by Compiler]

The novelty of the situation confronting the Convention, the differences among delegates relative to the scope of authority they possessed, the absence of structural models for an adequate federal union, and above all the widespread provincialism of the times, made agreement on a prearranged committee system difficult, if not impossible. The rules therefore prescribed the method of choosing committee members, leaving to needs arising in the process of deliberation occasion for their creation. This simple, flexible policy was admirably suited to the exigencies of procedure, and enabled the Convention, a small, hard working body, to dominate drafting activities in all stages of development.

For the preparation of a plan to be submitted when the Convention was organized and ready for work the Virginia delegation assumed responsibility, prompted by the lead their state had taken in the movement for a stronger union, by the fruitful thinking of outstanding members, and by the delay in the appearance of a quorum at Philadelphia which permitted them to meet daily in the interim for two or three hours. The result was the Virginia plan, a well-thought-out federal system despite its retention of objectionable features taken from the Articles of Confederation. This plan was submitted to the Convention by Governor Randolph on May 29, and engaged its continuous attention in Committee of the Whole until June 13.

By this time the steady trend towards well differentiated national institutions with greatly expanded powers aroused growing dissatisfaction among champions of state sovereignty, and gave rise to a movement led by Paterson of New Jersey to sub-

stitute for the Virginia plan one adhering closely to the provisions of the Articles of Confederation. This proposed substitute came before the Convention on June 15, and presented squarely to its members the alternatives of continuing the existing Confederation resting on the foundation of state sovereignty, with added organs and a modest enlargement of powers, or a new federal system with organs and powers rooted in the whole people and operating on individuals. Thus the delegates from Virginia and the supporters of the Paterson movement functioned as improvised committees for the drafting of competing schemes of government considered in convention.

The first Convention committee that was used in the deliberations at Philadelphia was, naturally, the Committee of the Whole, that historic legislative contrivance for effective consideration of a complicated scheme by all members of a deliberative body informally. That committee devoted two busy weeks to the exclusive consideration of the Virginia plan, and debated for three days the proposition to make the New Jersey plan the basis of future developments. The result of these deliberations in Committee of the Whole was adherence to the Virginia plan by a vote of 7 to 3, with Maryland divided—a decision which subsequent efforts in convention failed to reverse or impair.

For harmonizing differences that occurred in the discussion of questions before the Convention, special committees were elected from time to time as the need for them arose. When the problem under consideration affected the states as such, as well as the general government, it was referred to a committee composed of a delegate from each state represented at Philadelphia. These committees were called committees of states, or grand committees, and were used effectively for working out a compromise on representation in the Senate, a solution of the problem of allotting legislators, drafting a satisfactory provision relative to the militia, the delicate question of the slave trade and navigation acts, and, finally, supplying omitted provisions as the Convention neared the end of its session. It was rare for controversial questions to be referred to a committee with fewer members than one from each state, but that was done on July 6, when

the first committee on the allotment of legislators was created in convention.

On July 24 the famous Committee of Detail was elected to arrange systematically fundamentals which the Convention had evolved from the Virginia plan, and to supplement the resolutions referred to it with a cementing material needed to produce a symmetrical whole. The personnel of this committee was impressive proof of the Convention's capacity to select for difficult tasks men specially qualified for the job assigned to them. Rutledge, the chairman, was as broadminded a representative of states' rights as the Convention contained; Randolph had submitted and explained the Virginia plan and had taken a leading part in the discussions preceding the appointment of the Committee of Detail; Gorham had served as president of the Congress of the Confederation, was chairman of the Convention's Committee of the Whole, and brought to Philadelphia a national perspective of the problems of the times; Ellsworth, the clear-headed delegate from Connecticut, proved in convention and subsequently that he was one of the constructive leaders of his day; Wilson commands our admiration with his clarifying exposition of principles of political science, with his persuasive advocacy of essentials of popular government, with his prophetic grasp of factors that he championed before the country was ready for them. In ten days this committee brought before the Convention a report that was in many respects the most important stage in the development of the Constitution. (See Chapter 3 for the report.)

On September 8 the Convention had carried its elaboration of the draft submitted by the Committee of Detail far enough to prepare for the style and final arrangement of the Constitution. It accordingly elected a committee of five "to revise the style of and arrange the articles which had been agreed to by the house," composed of Johnson, chairman, Hamilton, Gouverneur Morris, Madison, and King. With less latitude than the Committee of Detail, and, therefore, having less power over substantive provisions of the Constitution, this able Committee on Style and Arrangement nevertheless gave to that document its most en-

during qualities—its conciseness, its adaptability, its flexibility, and withal its stability. Scholars have found reason for crediting Gouverneur Morris with the preparation of the report which gave to the completed Constitution its remarkable clarity and terseness of phraseology.

CHAPTER 2  
PLANS SUBMITTED TO THE FEDERAL  
CONVENTION

[Differences among delegates at Philadelphia about principles that should determine the character of "a more perfect Union," and about the authority of the Convention to go beyond mere amendment of the Articles of Confederation, made the consideration of at least two plans for a government "adequate to the preservation and support of the Union" inevitable. The circumstances that prompted the preparation of these two plans are described in Chapter 1, *supra*, under the caption "Committees of the Convention." The Virginia plan and the New Jersey plan printed below from the texts contained in Hunt and Scott's *Debates in the Federal Convention of 1787, Reported by James Madison* presented these competing views to the makers of our Constitution. Two other plans, one submitted by Charles Pinckney on May 29, the other by Alexander Hamilton on June 18, came before the Convention, but never received consideration as basic propositions.]

THE VIRGINIA PLAN

May 29     Randolph: Then opened the main business. He expressed his regret that it should fall to him rather than those who were of longer standing in life and political experience to open the great subject of their mission. But, as the Convention had originated from Virginia, and his colleagues supposed that some proposition was expected from them, they had imposed this task on him.

He then commented on the difficulty of the crisis, and the necessity of preventing the fulfilment of the prophecies of the American downfall.

He observed that in revising the federal system we ought to inquire, first, into the properties which such a government ought to possess; second, the defects of the Confederation; third, the danger of our situation; and fourth, the remedy.

1. The character of such a government ought to secure, first, against foreign invasion; second, against dissensions between members of the Union, or seditions in particular states; third, to procure to the several states, various blessings of which an isolated situation was incapable; fourth, to be able to defend itself against encroachment; and fifth, to be paramount to the state constitutions.

2. In speaking of the defects of the Confederation, he professed a high respect for its authors, and considered them as having done all that patriots could do in the then infancy of the science of constitutions and of confederacies—when the inefficiency of requisitions was unknown; no commercial discord had arisen among any states; no rebellion had appeared as in Massachusetts; foreign debts had not become urgent; the havoc of paper money had not been foreseen; treaties had not been violated—and perhaps nothing better could be obtained from the jealousy of the states with regard to their sovereignty.

He then proceeded to enumerate the defects: First, that the Confederation produced no security against foreign invasion, Congress not being permitted to prevent a war nor to support it by their own authority. Of this he cited many examples, most of which tended to show that they could not cause infractions of treaties or of the law of nations to be punished; that particular states might by their conduct provoke war without control; and that neither militia nor drafts being fit for defense on such occasions, enlistments only could be successful, and these could not be executed without money.

Second, that the federal government could not check the quarrels between states, nor a rebellion in any, not having

constitutional power nor means to interpose according to the exigency.

Third, that there were many advantages which the United States might acquire, which were not attainable under the Confederation—such as a productive impost, counteraction of the commercial regulations of other nations, pushing of commerce *ad libitum*, etc., etc.

Fourth, that the federal government could not defend itself against encroachments from the states.

Fifth, that it was not even paramount to the state constitutions, ratified as it was in many of the states.

3. He next reviewed the danger of our situation and appealed to the sense of the best friends of the United States, the prospect of anarchy from the laxity of government everywhere, and to other considerations.

4. He then proceeded to the remedy, the basis of which he said must be the republican principle.

He proposed as conformable to his ideas the following resolutions, which he explained one by one.

1. Resolved, that the Articles of Confederation ought to be so corrected and enlarged as to accomplish the objects proposed by their institution; namely, “common defense, security of liberty and general welfare.”

2. Resolved, therefore, that the rights of suffrage in the national legislature ought to be proportioned to the quotas of contribution, or to the number of free inhabitants, as the one or the other rule may seem best in different cases.

3. Resolved, that the national legislature ought to consist of two branches.

4. Resolved, that the members of the first branch of the national legislature ought to be elected by the people of the several states every —— for the term of ——; to be of the age of —— years at least, to receive liberal stipends by which they may be compensated for the devotion of their time to the public service; to be ineligible to any office established by a particular state, or under the authority of the United States, except those peculiarly belonging to the functions of

the first branch, during the term of service, and for the space of —— after its expiration; to be incapable of re-election for the space of —— after the expiration of their term of service, and to be subject to recall.

5. Resolved, that the members of the second branch of the national legislature ought to be elected by those of the first, out of a proper number of persons nominated by the individual legislatures, to be of the age of —— years at least; to hold their offices for a term sufficient to ensure their independence; to receive liberal stipends, by which they may be compensated for the devotion of their time to the public service; and to be ineligible to any office established by a particular state, or under the authority of the United States, except those peculiarly belonging to the functions of the second branch, during the term of service, and for the space of —— after the expiration thereof.

6. Resolved, that each branch ought to possess the right of originating acts; that the national legislature ought to be empowered to enjoy the legislative rights vested in Congress by the Confederation, and moreover to legislate in all cases to which the separate states are incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual legislation; to negative all laws passed by the several states, contravening in the opinion of the national legislature the Articles of Union or any treaty subsisting under the authority of the Union; and to call forth the force of the Union against any member of the Union failing to fulfill its duty under the Articles thereof.

7. Resolved, that a national executive be instituted; to be chosen by the national legislature for the term of —— years, to receive punctually at stated times a fixed compensation for the services rendered, in which no increase nor diminution shall be made so as to affect the magistracy existing at the time of increase or diminution, and to be ineligible a second time; and that besides a general authority to execute the national laws, it ought to enjoy the executive rights vested in Congress by the Confederation.



8. Resolved, that the executive and a convenient number of the national judiciary ought to compose a council of revision with authority to examine every act of the national legislature before it shall operate, and every act of a particular legislature before a negative thereon shall be final; and that the dissent of the said council shall amount to a rejection, unless the act of the national legislature be again passed, or that of a particular legislature be again negatived by ——— of the members of each branch.

9. Resolved, that a national judiciary be established to consist of one or more supreme tribunals, and of inferior tribunals to be chosen by the national legislature, to hold their offices during good behavior; and to receive punctually at stated times fixed compensation for their services, in which no increase or diminution shall be made so as to affect the persons actually in office at the time of such increase or diminution. That the jurisdiction of the inferior tribunals shall be to hear and determine in the first instance, and of the supreme tribunal to hear and determine in the dernier resort, all piracies and felonies on the high seas, captures from an enemy; cases in which foreigners or citizens of other states applying to such jurisdictions may be interested, or which respect the collection of the national revenue; impeachments of any national officers, and questions which may involve the national peace and harmony.

10. Resolved, that provision ought to be made for the admission of states lawfully arising within the limits of the United States, whether from a voluntary junction of government and territory or otherwise, with the consent of a number of voices in the national legislature less than the whole.

11. Resolved, that a republican government and the territory of each state, except in the instance of a voluntary junction of government and territory, ought to be guaranteed by the United States to each state.

12. Resolved, that provision ought to be made for the continuance of Congress and their authorities and privileges, until a given day after the reform of the Articles of Union shall

be adopted, and for the completion of all their engagements.

13. Resolved, that provision ought to be made for the amendment of the Articles of Union whensoever it shall seem necessary, and that the assent of the national legislature ought not to be required thereto.

14. Resolved, that the legislative, executive and judiciary powers within the several states ought to be bound by oath to support the Articles of Union.

15. Resolved, that the amendments which shall be offered to the Confederation by the Convention, ought at a proper time, or times, after the approbation of Congress, to be submitted to an assembly or assemblies of representatives, recommended by the several legislatures, to be expressly chosen by the people to consider and decide thereon.

He concluded with an exhortation not to suffer the present opportunity of establishing general peace, harmony, happiness and liberty in the United States to pass away unimproved.<sup>1</sup>

### THE NEW JERSEY PLAN

Paterson: Observed to the Convention that it was the wish of several deputations, particularly that of New Jersey, that further time might be allowed them to contemplate the plan reported from the Committee of the Whole, and to digest one purely federal, and contra-distinguished from the reported plan. He said they hoped to have such a one ready by tomorrow to be laid before the Convention. The Convention adjourned that leisure might be given for the purpose. *June 14*

Paterson: Laid before the Convention the plan which he said several of the deputations wished to be substituted in place of that proposed by Mr. Randolph. After some little discussion of the most proper mode of giving it a fair deliberation, it was agreed that it should be referred to a Committee of the Whole, and that in order to place the two plans in due comparison, the other should be recommitted. At the earnest re- *June 15*

<sup>1</sup> This abstract of the speech was furnished to James Madison by Mr. Randolph and is in his handwriting.

quest of Mr. Lansing and some other gentlemen, it was also agreed that the Convention should not go into Committee of the Whole on the subject until tomorrow, by which delay the friends of the plan proposed by Mr. Paterson would be better prepared to explain and support it, and all would have an opportunity of taking copies.<sup>2</sup>

The propositions from New Jersey moved by Mr. Paterson were in the words following:

1. Resolved, that the Articles of Confederation ought to be so revised, corrected and enlarged as to render the federal Constitution adequate to the exigencies of government and the preservation of the Union.

2. Resolved, that in addition to the powers vested in the United States in Congress by the present existing Articles of Confederation, they be authorized to pass acts for raising a revenue, by levying a duty or duties on all goods or merchandizes of foreign growth or manufacture, imported into any part of the United States, by stamps on paper, vellum or parchment, and by a postage on all letters or packages passing through the general post office, to be applied to such federal purposes as they shall deem proper and expedient; to make rules and regulations for the collection thereof; and the same from time to time, to alter and amend in such manner as they shall think proper; to pass acts for the regulation of trade and

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<sup>2</sup> This plan had been concerted among the deputations, or members thereof, from Connecticut, New York, New Jersey, Delaware, and perhaps Mr. Martin from Maryland who made with them a common cause though on different principles. Connecticut and New York were against a departure from the principle of the Confederation, wishing rather to add a few new powers to Congress than to substitute a national government. The states of New Jersey and Delaware were opposed to a national government because its patrons considered a proportional representation of the states as the basis of it. The eagerness displayed by the members opposed to a national government from these different motives began now to produce serious anxiety for the result of the Convention. Mr. Dickinson said to Mr. Madison: You see the consequence of pushing things too far. Some of the members from the small states wish for two branches in the general legislature, and are friends to a good national government; but we would sooner submit to a foreign power than to submit to be deprived in both branches of the legislature of an equality of suffrage, and thereby be thrown under the domination of the large states.

commerce as well with foreign nations as with each other, provided that all punishments, fines, forfeitures and penalties to be incurred for contravening such acts, rules and regulations shall be adjudged by the common law judiciaries of the state in which any offense contrary to the true intent and meaning of such acts, rules and regulations shall have been committed or perpetrated, with liberty of commencing in the first instance all suits and prosecutions for that purpose in the superior common law judiciary in such state, subject nevertheless for the correction of all errors, both in law and fact in rendering judgment, to an appeal to the judiciary of the United States.

3. Resolved, that whenever requisitions shall be necessary, instead of the rule for making requisitions mentioned in the Articles of Confederation, the United States in Congress be authorized to make such requisitions in proportion to the whole number of white and other free citizens and inhabitants of every age, sex and condition, including those bound to servitude for a term of years, and three-fifths of all other persons not comprehended in the foregoing description, except Indians not paying taxes; that if such requisitions be not complied with in the time specified therein, to direct the collection thereof in the non-complying states and for that purpose to devise and pass acts directing and authorizing the same; provided that none of the powers hereby vested in the United States in Congress shall be exercised without the consent of at least —— states, and in that proportion if the number of confederated states should hereafter be increased or diminished.

4. Resolved, that the United States in Congress be authorized to elect a federal executive to consist of —— persons, to continue in office for the term of —— years, to receive punctually at stated times a fixed compensation for their services, in which no increase or diminution shall be made so as to affect the persons composing the executive at the time of such increase or diminution, to be paid out of the federal treasury; to be incapable of holding any other office or ap-

pointment during their time of service and for —— years thereafter; to be ineligible a second time, and removable by Congress on application by a majority of the executives of the several states; that the executives besides their general authority to execute the federal acts ought to appoint all federal officers not otherwise provided for, and to direct all military operations; provided that none of the persons composing the federal executive shall on any occasion take command of any troops, so as personally to conduct any military enterprise as general or in other capacity.

5. Resolved, that a federal judiciary be established to consist of a supreme tribunal, the judges of which to be appointed by the executive, and to hold their offices during good behavior, to receive punctually at stated times a fixed compensation for their services in which no increase or diminution shall be made, so as to affect the persons actually in office at the time of such increase or diminution; that the judiciary so established shall have authority to hear and determine in the first instance on all impeachments of federal officers, and by way of appeal in the dernier resort in all cases touching the rights of ambassadors, in all cases of captures from an enemy, in all cases of piracies and felonies on the high seas, in all cases in which foreigners may be interested, in the construction of any treaty or treaties, or which may arise on any of the acts for the regulation of trade, or the collection of the federal revenue; that none of the judiciary shall during the time they remain in office be capable of receiving or holding any other office or appointment during their term of service, or for —— thereafter.

6. Resolved, that all acts of the United States in Congress, made by virtue and in pursuance of the powers hereby and by the Articles of Confederation vested in them, and all treaties made and ratified under the authority of the United States shall be the supreme law of the respective states so far forth as those acts or treaties shall relate to the said states or their citizens, and that the judiciary of the several states shall be bound thereby to their decisions, any thing in the respec-

tive laws of the individual states to the contrary notwithstanding; and that if any state, or any body of men in any state shall oppose or prevent the carrying into execution such acts or treaties, the federal executive shall be authorized to call forth the power of the confederated states, or so much thereof as may be necessary to enforce and compel an obedience to such acts, or an observance of such treaties.

7. Resolved, that provision be made for the admission of new states into the Union.

8. Resolved, that the rule for naturalization ought to be the same in every state.

9. Resolved, that a citizen of one state committing an offense in another state of the Union, shall be deemed guilty of the same offense as if it had been committed by a citizen of the state in which the offense was committed.<sup>3</sup>

#### THE VIRGINIA AND NEW JERSEY PLANS COMPARED

[Insertion by Compiler]

To stress the features of the two plans that were urged in Committee of the Whole, a comparison of their principal provisions should be helpful.

The first resolution of each series gives the controlling principle underlying the plan it introduces. Revision, correction and enlargement of the Articles of Confederation so as to render them "adequate to the exigencies of government" measure the scope of the New Jersey improvement processes. In other words, the first resolution of the New Jersey plan retains the principle of *confederation* as the basis of revision. On the other hand, the

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<sup>3</sup> This copy of Mr. Paterson's propositions varies in a few clauses from that in the printed journal furnished from the papers of Mr. Brearley, a colleague of Mr. Paterson. A confidence is felt, notwithstanding, in its accuracy. That the copy in the journal is not entirely correct is shown by the ensuing speech of Mr. Wilson (June 16) in which he refers to the mode of removing the executive by impeachment and conviction as a feature in the Virginia plan forming one of its contrasts to that of Mr. Paterson, which proposed a removal on the application of a majority of the executives of the states. In the copy printed in the journal, the two modes are combined in the same clause; whether through inadvertence, or as a contemplated amendment does not appear.

first resolution of the Committee of the Whole (see Chapter 3, *infra*) declares "that a national government ought to be established, consisting of a supreme legislative, executive, and judiciary" <sup>4</sup>—that is to say it prescribes the principle of federation as the guide for future developments of the Constitution. These introductory resolutions epitomize the outstanding differences between the two plans.

The second New Jersey resolution assumes the continuance as a legislative body of the Congress under the Articles of Confederation. Here is where enormous differences between the two plans present themselves. Under the New Jersey plan the legislature of the Union is a unicameral body in which each state has an equal voice expressed by not less than two nor more than seven delegates chosen annually as the legislature of the state shall direct. Under the Virginia plan <sup>5</sup> that legislature is a bicameral organ with the states represented proportionally in each branch. Members of the first branch are elected by the people to serve three years; members of the second branch are chosen by the state legislatures to serve seven years. Congress under the New Jersey plan is an agency of the states; under the Virginia plan it is potentially the national legislative organ of the people.

To the Congress established by the Articles of Confederation the second New Jersey resolution gives primary control of important sources of revenue by empowering it to levy duties on imports, to require stamps on paper, vellum, or parchment, and to prescribe postage for letters and packages sent by mail. The purposes for which revenue is raised must be determined by the Congress. Anticipating the probable inadequacy of these sources of revenue for the needs of a rapidly growing population, the third New Jersey resolution modified the system of requisitions authorized by the Articles of Confederation, basing it on the whole number of white and other free persons of every age or sex, including those bound to service for a term of years, and three-fifths of all other persons except untaxed Indians. To secure compliance with these requisitions, Congress is given the power

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<sup>4</sup> See p. 91, *infra*.

<sup>5</sup> As revised in Committee of the Whole.

to direct the collection of them in non-complying states. In addition to the taxing powers named above, the second New Jersey resolution authorizes Congress to regulate commerce with foreign nations and among the several states. The sixth resolution of the Committee of the Whole is, by comparison with the New Jersey resolution analyzed, vague and indefinite. Starting with the powers of Congress granted by the Articles of Confederation, it supplements these with authority to legislate in all cases to which the separate states are incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual legislation. To protect this undefined sphere of legislative power, the national legislature is given the right to negative state laws! Stating the results of this comparison in general terms, the New Jersey resolutions enumerate definite powers which Congress may exercise; the revised Virginia resolution, on the other hand, announces principles which are to determine future delegations of power.

The fourth New Jersey resolution and the ninth revised Virginia resolution have more resemblances than differences. Both create a federal executive elected for a term of years by the legislature; both secure the independence of the executive by requiring a fixed compensation paid out of the general treasury which cannot be changed during the term of the executive; both confer on the executive, power to execute the laws and to make appointments; both make the executive ineligible for a second term. The following differences should be noted: the New Jersey resolution requires a plural executive, the Virginia plan reproduces the typical executive composed of one person; persons forming the executive called for by the New Jersey plan may not hold any other office during their term of service, or for ——— years thereafter; the Virginia plan is silent on this subject; the executives of the New Jersey plan are removable by Congress on the application of a majority of the state executives, whereas the Virginia plan requires conviction in impeachment proceedings for removal; the executives of the New Jersey plan have no share in legislation, that of the Virginia plan possesses the veto power.

To evaluate the judiciaries of the two plans, the fifth and the



last portion of the second New Jersey resolutions should be compared with the eleventh, twelfth, and thirteenth resolutions of the Committee of the Whole. Both plans establish a supreme federal tribunal. The New Jersey plan provides for no inferior federal tribunals, but relies on state courts for the exercise of original jurisdiction subject to appeals to the federal supreme court. The Virginia plan establishes both superior and inferior federal tribunals. In the New Jersey plan, judges are appointed by the executive, in the Virginia plan by the Senate. Both plans provide for tenure of judges during good behavior and salaries beyond the control of the legislature during that tenure. On the subject of jurisdiction the New Jersey resolutions are clearer and fuller than the corresponding provisions of the Virginia plan. It gives the supreme federal tribunal original jurisdiction in all impeachments of federal officers, and appellate jurisdiction in cases affecting ambassadors, in captures from an enemy, in cases in which foreigners are interested; in the construction of treaties, and in cases arising from the regulation of commerce or the collection of revenue. The revised Virginia resolutions extend the jurisdiction of national courts to all cases which relate to the collection of the national revenue, impeachments of any national officers, and questions which involve the national peace and harmony. These vague propositions are hardly enlightening guides to the establishment of the proper province for federal courts.

The sixth New Jersey resolution, forerunner in convention of the famous supremacy and *non obstante* clauses of the completed Constitution, is the most effective support of national authority submitted to the delegates during the early days of their deliberations. Its weakest feature, namely provision for the coercion of states, was the necessary result of relations between these states and the Confederation they composed. Even the "more perfect Union" of our carefully wrought federal Constitution could not save us from the tragedy of compulsion operating on states claiming to be sovereign. The eighteenth revised Virginia resolution is the best solution of this problem that the Committee of the Whole could offer. It goes no further than to bind by oath the legislative, executive, and judicial powers in the several states

to support the Articles of Union. Boiled down to the essence of each, the New Jersey resolutions created a legal sanction, that of the Committee imposed a moral obligation to support the Constitution.

The seventh New Jersey resolution and the fourteenth resolution of the Committee of the Whole relating to the admission of new states are identical in purpose. As the statement of a preliminary that should be accepted as the basis for the development of details after the fundamental features of the new government have been determined, the former is better than the latter.

The last two New Jersey resolutions, the eighth and ninth, deal with matters not included in the report of the Committee of the Whole. The eighth resolution urges a principle that should become a substantive part of any constitution adequate to the needs of a federal union. The clumsily worded ninth resolution is superfluous because the sovereign right of a state to exercise jurisdiction over offenses committed within its limits is firmly established by law.

This comparison of the two sets of resolutions submitted to the Convention would be incomplete without some reference to recommendations of the Committee of the Whole that have no corresponding provisions in the New Jersey resolutions. The first of these is the fifteenth resolution relative to the continuance of Congress. The New Jersey plan makes Congress the permanent legislative organ of the revised confederation; hence there was no reason for transitional arrangements. The guarantee of republican government recommended by the Committee in the sixteenth resolution could have no place in the New Jersey plan which perpetuates the sovereignty of the states. Finally, the need for a new method of amending the Constitution is stated by the Committee in the seventeenth resolution; whereas the New Jersey plan continues the extremely difficult amending process of the articles.

If this analytical comparison of the two famous plans submitted to the Convention on June 15 has had attentive consideration, the reader can visualize several excellent features of the New Jersey resolutions that deserve more than passing notice.

Speculation in a study of actual development that gave us our unique federal Constitution may be out of place here, but there is ground for the opinion expressed by competent scholars that the New Jersey plan, submitted at the beginning of the session, might have displaced the Virginia plan. "There is a divinity that shapes our ends, rough hew them how we will." Perhaps the two weeks of intensive consideration that preceded the introduction of a rival scheme enabled the makers to see clearly the inherent weaknesses of any confederate government and the consequent necessity for the establishment of a new federal system.

#### DEBATE CULMINATING IN APPROVAL OF VIRGINIA PLAN

[Madison has preserved in his Notes the most complete summary of the debate on the proposal to substitute the New Jersey plan for that submitted by the Virginia delegation as revised in Committee of the Whole. The arguments included in his summary are given below.]

*June 16*    **Lansing:** Called for the reading of the first resolution of each plan, which he considered as involving principles directly in contrast; that of Mr. Paterson, says he, sustains the sovereignty of the respective states, that of Mr. Randolph destroys it. The latter requires a negative on all the laws of the particular states, the former only certain general power for the general good. The plan of Mr. Randolph in short absorbs all power except what may be exercised in the little local matters of the states which are not objects worthy of the supreme cognizance. He grounded his preference of Mr. Paterson's plan chiefly on two objections to that of Mr. Randolph; first, want of power in the Convention to discuss and propose it, and secondly, the improbability of its being adopted.

1. He was decidedly of opinion that the power of the Convention was restrained to amendments of a federal nature, and having for their basis the Confederacy in being. The acts of Congress, the tenor of the acts of the states, the commissions produced by the several deputations, all proved this. And this

limitation of the power to an amendment of the Confederacy marked the opinion of the states that it was unnecessary and improper to go further. He was sure that this was the case with his state. New York would never have concurred in sending deputies to the Convention if she had supposed the deliberations were to turn on a consolidation of the states and a national government.

2. Was it probable that the states would adopt and ratify a scheme which they had never authorized us to propose and which so far exceeded what they regarded as sufficient? We see by their several acts, particularly in relation to the plan of revenue proposed by Congress in 1783, not authorized by the Articles of Confederation, what were the ideas they then entertained. Can so great a change be supposed to have already taken place? To rely on any change which is hereafter to take place in the sentiments of the people would be trusting to too great an uncertainty. We know only what their present sentiments are. And it is in vain to propose what will not accord with these. The states will never feel a sufficient confidence in a general government to give it a negative on their laws. The scheme is itself totally novel. There is no parallel to it to be found. The authority of Congress is familiar to the people, and an augmentation of the powers of Congress will be readily approved by them.

Paterson: Said, as he had on a former occasion given his sentiments on the plan proposed by Mr. Randolph, he would now, avoiding repetition as much as possible, give his reasons in favor of that proposed by himself. He preferred it because it accorded, first, with the powers of the Convention; secondly, with the sentiments of the people. If the Confederacy was radically wrong, let us return to our states and obtain larger powers, not assume them ourselves. I came here not to speak my own sentiments but the sentiments of those who sent me. Our object is not such a government as may be best in itself, but such a one as our constituents have authorized us to prepare, and as they will approve. If we argue the matter on the supposition that no confederacy at present exists, it cannot be

denied that all the states stand on the footing of equal sovereignty. All, therefore, must concur before any can be bound. If a proportional representation be right, why do we not vote so here? If we argue on the fact that a federal compact actually exists, and consult the articles of it, we still find an equal sovereignty to be the basis of it. He reads the fifth Article of the Confederation, giving each state a vote; and the thirteenth, declaring that no alteration shall be made without unanimous consent. This is the nature of all treaties. What is unanimously done must be unanimously undone. It was observed (by Mr. Wilson) that the larger states gave up the point, not because it was right, but because the circumstances of the moment urged the concession. Be it so. Are they for that reason at liberty to take it back? Can the donor resume his gift without the consent of the donee? This doctrine may be convenient, but it is a doctrine that will sacrifice the lesser states. The larger states acceded readily to the Confederacy. It was the small ones that came in reluctantly and slowly. New Jersey and Maryland were the two last; the former objecting to the want of power in Congress over trade; both of them to the want of power to appropriate the vacant territory to the benefit of the whole. If the sovereignty of the states is to be maintained, the representatives must be drawn immediately from the states, not from the people; and we have no power to vary the idea of equal sovereignty. The only expedient that will cure the difficulty is that of throwing the states into hotchpot. To say that this is impracticable will not make it so. Let it be tried, and we shall see whether the citizens of Massachusetts, Pennsylvania and Virginia accede to it. It will be objected that coercion will be impracticable. But will it be more so in one plan than the other? Its efficacy will depend on the quantum of power collected, not on its being drawn from the states or from the individuals; and according to his plan it may be exerted on individuals as well as according to that of Mr. Randolph. A distinct executive and judiciary also were equally provided by his plan. It is urged that two branches in the legislature are necessary. Why? For the purpose of a check.

But the reason for the precaution is not applicable to this case. Within a particular state, where party heats prevail, such a check may be necessary. In such a body as Congress it is less necessary; and, besides, the delegations of the different states are checks on each other. Do the people at large complain of Congress? No. What they wish is that Congress may have more power. If the power now proposed be not enough, the people hereafter will make additions to it. With proper powers, Congress will act with more energy and wisdom than the proposed national legislature; being fewer in number, and more secreted and refined by the mode of election. The plan of Mr. Randolph will also be enormously expensive. Allowing Georgia and Delaware two representatives each in the popular branch, the aggregate number of that branch will be one hundred and eighty. Add to it half as many for the other branch, and you have two hundred and seventy members, coming once at least a year from the most distant as well as the most central parts of the republic. In the present deranged state of our finances, can so expensive a system be seriously thought of? By enlarging the powers of Congress, the greatest part of this expense will be saved, and all purposes will be answered. At least a trial ought to be made.

Wilson: Entered into a contrast of the principal points of the two plans so far, he said, as there had been time to examine the one last proposed. These points were: (1) In the Virginia plan there are *two*, and in some degree three, branches in the legislature; in the plan from New Jersey there is to be a *single* legislature only. (2) Representation of the people at large is the basis of one; the state legislatures the pillars of the others. (3) Proportional representation prevails in one, equality of suffrage in the other. (4) A single executive magistrate is at the head of the one; a plurality is held out in the other. (5) In the one, a majority of the people of the United States must prevail; in the other, a minority may prevail. (6) The national legislature is to make laws in all cases to which the separate states are incompetent, etc.; in place of this, Congress is to have additional power in a few cases only. (7) A negative on

the laws of the states; in place of this, coercion to be substituted. (8) The executive to be removable on impeachment and conviction, in one plan; in the other, to be removable at the instance of a majority of the executives of the states. (9) Revision of the laws provided for, in one; no such check in the other. (10) Inferior national tribunals, in one; none such in the other. (11) In the one, jurisdiction of national tribunals to extend, etc.; an appellate jurisdiction only allowed in the other. (12) Here, the jurisdiction is to extend to all cases affecting the national peace and harmony; there, a few cases only are marked out. (13) Finally, the ratification is, in this, to be by the people themselves; in that, by the legislative authorities, according to the thirteenth Article of the Confederation.

With regard to the *power of the Convention*, he conceived himself authorized to *conclude nothing*, but to be at liberty to *propose any thing*. In this particular, he felt himself perfectly indifferent to the two plans.

With regard to the *sentiments of the people*, he conceived it difficult to know precisely what they are. Those of the particular circle in which one moved were commonly mistaken for the general voice. He could not persuade himself that the state governments and sovereignties were so much the idols of the people, nor a national government so obnoxious to them as some supposed. Why should a national government be unpopular? Has it less dignity? Will each citizen enjoy under it less liberty or protection? Will a citizen of *Delaware* be degraded by becoming a citizen of the *United States*? Where do the people look at present for relief from the evils of which they complain? Is it from an internal reform of their governments? No, sir. It is from the national councils that relief is expected. For these reasons he did not fear that the people would not follow us into a national government; and it will be a further recommendation of Mr. Randolph's plan that it is to be submitted to *them*, and not to the *legislatures*, for ratification.

Proceeding now to the first point on which he had contrasted the two plans, he observed that, anxious as he was for

some augmentation of the federal powers, it would be with extreme reluctance indeed that he could ever consent to give powers to Congress. He had two reasons, either of which was sufficient: first, Congress, as a legislative body, does not stand on the people; secondly, it is a *single* body.

1. He would not repeat the remarks he had formerly made on the principles of representation. He would only say that an inequality in it has ever been a poison contaminating every branch of government. In Great Britain, where this poison has had a full operation, the security of private rights is owing entirely to the purity of her tribunals of justice, the judges of which are neither appointed nor paid by a venal parliament. The political liberty of that nation, owing to the inequality of representation, is at the mercy of its rulers. He means not to insinuate that there is any parallel between the situation of that country and ours, at present. But it is a lesson we ought not to disregard, that the smallest bodies in Great Britain are notoriously the most corrupt. Every other source of influence must also be stronger in small than in large bodies of men. When Lord Chesterfield had told us that one of the Dutch provinces had been seduced into the views of France, he need not have added that it was not Holland but one of the *smallest* of them. There are facts among ourselves which are known to all. Passing over others, we will only remark that the *impost*, so anxiously wished for by the public, was defeated not by any of the *larger* states in the Union.

2. Congress is a single legislature. Despotism comes on mankind in different shapes, sometimes in an executive, sometimes in a military one. Is there no danger of a legislative despotism? Theory and practice both proclaim it. If the legislative authority be not restrained, there can be neither liberty nor stability; and it can only be restrained by dividing it within itself, into distinct and independent branches. In a single house there is no check, but the inadequate one of the virtue and good sense of those who compose it.

On another great point, the contrast was equally favorable to the plan reported by the Committee of the Whole. It vested



the executive powers in a single magistrate. The plan of New Jersey vested them in a plurality. In order to control the legislative authority, you must divide it. In order to control the executive, you must unite it. One man will be more responsible than three. Three will contend among themselves, till one becomes the master of his colleagues. In the triumvirates of Rome, first Caesar, then Augustus, are witnesses of this truth. The kings of Sparta and the consuls of Rome prove also the factious consequences of dividing the executive magistracy. Having already taken up so much time, he would not, he said, proceed to any of the other points. Those on which he had dwelt are sufficient of themselves; and on the decision of them the fate of the others will depend.

C. Pinckney: The whole comes to this, as he conceived. Give New Jersey an equal vote and she will dismiss her scruples and concur in the national system. He thought the Convention authorized to go any length in recommending, which they found necessary to remedy the evils which produced this Convention.

Ellsworth: Proposed, as a more distinctive form of collecting the mind of the committee on the subject, "that the legislative power of the United States should remain in Congress." This was not seconded, though it seemed better calculated for the purpose than the first proposition of Mr. Paterson, in place of which Mr. Ellsworth wished to substitute it.

Randolph: Was not scrupulous on the point of power. When the salvation of the republic was at stake, it would be treason to our trust not to propose what we found necessary. He painted in strong colors the imbecility of the existing confederacy and the danger of delaying a substantial reform. In answer to the objection drawn from the sense of our constituents, as denoted by their acts relating to the Convention and the objects of their deliberation, he observed that, as each state acted separately in the case, it would have been indecent for it to have charged the existing constitution with all the vices which it might have perceived in it. The first state that set on foot this experiment would not have been justified in going so far, ignorant as it was of the opinion of others, and sensible

as it must have been of the uncertainty of a successful issue to the experiment. There are reasons certainly of a peculiar nature, where the ordinary cautions must be dispensed with; and this is certainly one of them. He would not, as far as depended on him, leave anything that seemed necessary undone. The present moment is favorable and is probably the last that will offer.

The true question is whether we shall adhere to the federal plan or introduce the national plan. The insufficiency of the former has been fully displayed by the trial already made. There are but two modes by which the end of a general government can be attained: the first, by coercion, as proposed by Mr. Paterson's plan; the second, by real legislation, as proposed by the other plan. Coercion he pronounced to be *impracticable, expensive, cruel to individuals*. It tended also to habituate the instruments of it to shed the blood, and riot in the spoils, of their fellow citizens, and consequently trained them up for the service of ambition. We must resort therefore to a *national legislation over individuals*; for which Congress is unfit. To vest such power in them would be blending the legislative with the executive, contrary to the received maxim on this subject. If the union of these powers, heretofore, in Congress has been safe, it has been owing to the general impotency of that body. Congress is, moreover, not elected by the people but by the legislatures, who retain even a power of recall. They have therefore no will of their own; they are a mere diplomatic body, and are always obsequious to the views of the states, who are always encroaching on the authority of the United States. A provision for harmony among the states, as in trade, naturalization, etc.; for crushing rebellion, whenever it may rear its crest; and for certain other general benefits, must be made. The powers for these purposes can never be given to a body inadequate as Congress is in point of representation, elected in the mode in which they are, and possessing no more confidence than they do: for notwithstanding what has been said to the contrary, his own experience satisfied him that a rooted distrust of Congress pretty generally prevailed.

A national government alone, properly constituted, will answer the purpose; and he begged it to be considered that the present is the last moment for establishing one. After this select experiment, the people will yield to despair.

*June 18* Hamilton: Had been hitherto silent on the business before the Convention, partly from respect to others whose superior abilities, age and experience rendered him unwilling to bring forward ideas dissimilar to theirs; and partly from his delicate situation with respect to his own state, to whose sentiments, as expressed by his colleagues, he could by no means accede. The crisis, however, which now marked our affairs was too serious to permit any scruples whatever to prevail over the duty imposed on every man to contribute his efforts for the public safety and happiness. He was obliged, therefore, to declare himself unfriendly to both plans. He was particularly opposed to that from New Jersey, being fully convinced that no amendment of the Confederation, leaving the states in possession of their sovereignty, could possibly answer the purpose. On the other hand, he confessed he was much discouraged by the amazing extent of country, in expecting the desired blessings from any general sovereignty that could be substituted. As to the powers of the Convention, he thought the doubts started on that subject had arisen from distinctions and reasonings too subtle. A *federal* government he conceived to mean an association of independent communities into one. Different confederacies have different powers, and exercise them in different ways. In some instances, the powers are exercised over collective bodies; in others, over individuals, as in the German Diet; and among ourselves, in cases of piracy. Great latitude, therefore, must be given to the signification of the term. The plan last proposed departs, itself, from the *federal* idea, as understood by some, since it is to operate eventually on individuals. He agreed moreover with the honorable gentleman from Virginia (Mr. Randolph), that we owed it to our country to do, on this emergency, whatever we should deem essential to its happiness. The states sent us here to provide for the exigencies of the Union. To rely on and propose any plan not adequate

to these exigencies, merely because it was not clearly within our powers, would be to sacrifice the means to the end. It may be said that the *states* cannot *ratify* a plan not within the purview of the Article of the Confederation providing for alterations and amendments. But may not the states themselves, in which no constitutional authority equal to this purpose exists in the legislatures, have had in view a reference to the people at large? In the senate of New York, a proviso was moved that no act of the Convention should be binding until it should be referred to the people and ratified; and the motion was lost by a single voice only, the reason assigned against it being that it might possibly be found an inconvenient shackle.

The great question is what provision shall we make for the happiness of our country? He would first make a comparative examination of the two plans—prove that there were essential defects in both—and point out such changes as might render a *national one* efficacious. The great and essential principles necessary for the support of government are: (1) An active and constant interest in supporting it. This principle does not exist in the states in favor of the federal government. They have evidently in a high degree, the *esprit de corps*. They constantly pursue internal interests adverse to those of the whole. They have their particular debts, their particular plans of finance, etc. All these, when opposed to, invariably prevail over the requisitions and plans of Congress. (2) The love of power. Men love power. The same remarks are applicable to this principle. The states have constantly shown a disposition rather to regain the powers delegated by them than to part with more, or to give effect to what they had parted with. The ambition of their demagogues is known to hate the control of the general government. It may be remarked, too, that the citizens have not that anxiety to prevent a dissolution of the general government as of the particular governments. A dissolution of the latter would be fatal; of the former, would still leave the purposes of government attainable to a considerable degree. Consider what such a state as Virginia will be in a few years, a few compared with the life of nations. How strongly will it feel its

importance and self-sufficiency! (3) An habitual attachment of the people. The whole force of this tie is on the side of the state government. Its sovereignty is immediately before the eyes of the people; its protection is immediately enjoyed by them. From its hand distributive justice, and all those acts which familiarize and endear a government to a people are dispensed to them. (4) *Force*, by which may be understood a *coercion of laws* or *coercion of arms*. Congress has not the former, except in few cases. In particular states this coercion is nearly sufficient; though he held it in most cases not entirely so. A certain portion of military force is absolutely necessary in large communities. Massachusetts is now feeling this necessity, and making provision for it. But how can this force be exerted on the states collectively? It is impossible. It amounts to a war between the two parties. Foreign powers also will not be idle spectators. They will interpose; the confusion will increase; and a dissolution of the Union will ensue. (5) *Influence*—he did not mean corruption, but a dispensation of those regular honors and emoluments which produce an attachment to the government. Almost all the weight of these is on the side of the states; and must continue so as long as the states continue to exist. All the passions, then, we see, of avarice, ambition, interest, which govern most individuals, and all public bodies, fall into the current of the states and do not flow into the stream of the general government. The former, therefore, will generally be an overmatch for the general government, and render any confederacy in its very nature precarious. Theory is in this case fully confirmed by experience. The Amphictyonic Council had, it would seem, ample powers for general purposes. It had, in particular, the power of fining and using force against delinquent members. What was the consequence? Their decrees were mere signals of war. The Phocian War is a striking example of it. Philip at length, taking advantage of their disunion, and insinuating himself into their councils, made himself master of their fortunes. The German confederacy affords another lesson. The authority of Charlemagne seemed to be as great as could be necessary. The

great feudal chiefs, however, exercising their local sovereignties, soon felt the spirit, and found the means, of encroachments, which reduced the imperial authority to a nominal sovereignty. The Diet has succeeded, which, though aided by a prince at its head, of great authority independently of his imperial attributes, is a striking illustration of the weakness of confederated governments. Other examples instruct us in the same truth. The Swiss cantons have scarce any union at all and have been more than once at war with one another. How then are all these evils to be avoided? Only by such a complete sovereignty in the general government as will turn all the strong principles and passions above-mentioned on its side. Does the scheme of New Jersey produce this effect? Does it afford any substantial remedy whatever? On the contrary, it labors under great defects, and the defect of some of its provisions will destroy the efficacy of others. It gives a direct revenue to Congress, but this will not be sufficient. The balance can only be supplied by requisitions; which experience proves cannot be relied on. If states are to deliberate on the mode, they will also deliberate on the object of the supplies, and will grant or not grant, as they approve or disapprove of it. The delinquency of one will invite and countenance it in others. Quotas too must, in the nature of things, be so unequal as to produce the same evil. To what standard will you resort? Land is a fallacious one. Compare Holland with Russia; France or England with other countries of Europe; Pennsylvania with North Carolina—will the relative pecuniary abilities, in those instances, correspond with the relative value of land? Take numbers of inhabitants for the rule and make like comparison of different countries, and you will find it to be equally unjust. The different degrees of industry and improvement in different countries render the first object a precarious measure of wealth. Much depends, too, on *situation*. Connecticut, New Jersey, and North Carolina, not being commercial states, and contributing to the wealth of the commercial ones, can never bear quotas assessed by the ordinary rules of proportion. They will, and must, fail in their duty. Their example will be fol-

lowed—and the union itself be dissolved. Whence, then, is the national revenue to be drawn? From commerce; even from exports, which, notwithstanding the common opinion, are fit objects of moderate taxation; from excise, etc., etc.—These, though not equal, are less unequal than quotas. Another destructive ingredient in the plan is that equality of suffrage which is so much desired by the small states. It is not in human nature that Virginia and the large states should consent to it; or, if they did, that they should long abide by it. It shocks too much all ideas of justice and every human feeling. Bad principles in a government, though slow, are sure in their operation, and will gradually destroy it. A doubt has been raised whether Congress at present has a right to keep ships or troops in time of peace. He leans to the negative. Mr. Paterson's plan provides no remedy. If the powers proposed were adequate, the organization of Congress is such that they could never be properly and effectually exercised. The members of Congress, being chosen by the states and subject to recall, represent all the local prejudices. Should the powers be found effectual, they will from time to time be heaped on them, till a tyrannic sway shall be established. The general power, whatever be its form, if it preserves itself, must swallow up the state powers. Otherwise it will be swallowed up by them. It is against all the principles of a good government to vest the requisite powers in such a body as Congress. Two sovereignties cannot co-exist within the same limits. Giving powers to Congress must eventuate in a bad government, or in no government. The plan of New Jersey, therefore, will not do. What, then, is to be done? Here he was embarrassed. The extent of the country to be governed discouraged him. The expense of a general government was also formidable; unless there were such a diminution of expense on the side of the state governments as the case would admit. If they were extinguished, he was persuaded that great economy might be obtained by substituting a general government. He did not mean, however, to shock the public opinion by proposing such a measure. On the other hand, he saw no *other* necessity for declining it. They are not necessary

for any of the great purposes of commerce, revenue, or agriculture. Subordinate authorities, he was aware, would be necessary. There must be district tribunals; corporations for local purposes. But *cui bono* the vast and expensive apparatus now appertaining to the states? The only difficulty of a serious nature which occurred to him was that of drawing representatives from the extremes to the centre of the community. What inducements can be offered that will suffice? The moderate wages for the first branch could only be a bait to little demagogues. Three dollars or thereabouts, he supposed, would be the utmost. The Senate, he feared, from a similar cause would be filled by certain undertakers who wish for particular offices under the government. This view of the subject almost led him to despair that a republican government could be established over so great an extent. He was sensible, at the same time, that it would be unwise to propose one of any other form. In his private opinion he had no scruple in declaring, supported as he was by the opinion of so many of the wise and good, that the British government was the best in the world; and that he doubted much whether any thing short of it would do in America. He hoped gentlemen of different opinions would bear with him in this, and begged them to recollect the change of opinion on this subject which had taken place, and was still going on. It was once thought that the power of Congress was amply sufficient to secure the end of their institution. The error was now seen by every one. The members most tenacious of republicanism, he observed, were as loud as any in declaiming against the vices of democracy. This progress of the public mind led him to anticipate the time when others as well as himself would join in the praise bestowed by Mr. Neckar on the British constitution, namely, that it is the only government in the world "which unites public strength with individual security." In every community where industry is encouraged there will be a division of it into the few and the many. Hence, separate interests will arise. There will be debtors and creditors, etc. Give all power to the many, they will oppress the few. Give all power to the few, they will op-



press the many. Both, therefore, ought to have the power, that each may defend itself against the other. To the want of this check we owe our paper money, instalment laws, etc. To the proper adjustment of it the British owe the excellence of their constitution. Their House of Lords is a most noble institution. Having nothing to hope for by a change and a sufficient interest, by means of their property, in being faithful to the national interest, they form a permanent barrier against every pernicious innovation, whether attempted on the part of the Crown or of the Commons. No temporary Senate will have firmness enough to answer the purpose. The senate of Maryland which seems to be so much appealed to, has not yet been sufficiently tried. Had the people been unanimous and eager in the late appeal to them on the subject of a paper emission, they would have yielded to the torrent. Their acquiescing in such an appeal is a proof of it. Gentlemen differ in their opinions concerning the necessary checks, from the different estimates they form of the human passions. They suppose seven years a sufficient period to give the Senate an adequate firmness, from not duly considering the amazing violence and turbulence of the democratic spirit. When a great object of government is pursued, which seizes the popular passions, they spread like wild-fire and become irresistible. He appealed to the gentlemen from the New England states whether experience had not there verified the remark. As to the executive, it seemed to be admitted that no good one could be established on republican principles. Was not this giving up the merits of the question; for can there be a good government without a good executive? The English model was the only good one on this subject. The hereditary interest of the King was so interwoven with that of the nation, and his personal emolument so great, that he was placed above the danger of being corrupted from abroad; and at the same time was both sufficiently independent and sufficiently controlled to answer the purpose of the institution at home. One of the weak sides of republics was their being liable to foreign influence and corruption. Men of little character, acquiring great power, become easily the

tools of intermeddling neighbors. Sweden was a striking instance. The French and English had each their parties during the late revolution, which was effected by the predominant influence of the former. What is the inference from all these observations? That we ought to go as far, in order to attain stability and permanency, as republican principles will admit. Let one branch of the legislature hold their places for life, or at least during good behavior. Let the executive also be for life. He appealed to the feelings of the members present whether a term of seven years would induce the sacrifices of private affairs which an acceptance of public trust would require, so as to ensure the services of the best citizens. On this plan we should have in the Senate a permanent will, a weighty interest which would answer essential purposes. But is this a republican government, it will be asked? Yes, if all the magistrates are appointed and vacancies are filled by the people, or a process of election originating with the people. He was sensible that an executive, constituted as he proposed would have in fact but little of the power and independence that might be necessary. On the other plan of appointing him for seven years, he thought the executive ought to have but little power. He would be ambitious, with the means of making creatures; and as the object of his ambition would be to *prolong* his power, it is probable that in case of war he would avail himself of the emergency to evade or refuse a degradation from his place. An executive for life has not this motive for forgetting his fidelity, and will therefore be a safer depository of power. It will be objected, probably, that such an executive will be an *elective monarch*, and will give birth to the tumults which characterize that form of government. He would reply that *monarch* is an indefinite term. It marks not either the degree or duration of power. If this executive magistrate would be a monarch for life, the other proposed by the Report from the Committee of the Whole would be a monarch for seven years. The circumstance of being elective was also applicable to both. It had been observed by judicious writers that elective monarchies would be the best if they could be guarded against the *tumults* ex-

cited by the ambition and intrigues of competitors. He was not sure that tumults were an inseparable evil. He thought this character of elective monarchies had been taken rather from particular cases than from general principles. The election of Roman emperors was made by the *army*. In *Poland* the election is made by great rival *princes*, with independent power and ample means of raising commotions. In the German Empire, the appointment is made by the electors and princes, who have equal motives and means for exciting cabals and parties. Might not such a mode of election be devised among ourselves, as will defend the community against these effects in any dangerous degree? Having made these observations, he would read to the Committee a sketch of a plan which he should prefer to either of those under consideration. He was aware that it went beyond the ideas of most members. But will such a plan be adopted out of doors? In return he would ask, will the people adopt the other plan? At present they will adopt neither. But he sees the Union dissolving, or already dissolved—he sees evils operating in the states which must soon cure the people of their fondness for democracies—he sees that a great progress has been already made, and is still going on, in the public mind. He thinks, therefore, that the people will in time be unshackled from their prejudices; and whenever that happens, they will themselves not be satisfied at stopping where the plan of Mr. Randolph would place them, but be ready to go as far at least as he proposes. He did not mean to offer the paper he had sketched as a proposition to the Committee. It was meant only to give a more correct view of his ideas, and to suggest the amendments which he should probably propose to the plan of Mr. Randolph, in the proper stages of its future discussion. He reads his sketch in the words following, to wit:

I. The supreme legislative power of the United States of America to be vested in two different bodies of men; the one to be called the Assembly, the other the Senate; who together shall form the legislature of the United States, with power to pass all laws whatsoever, subject to the negative hereafter mentioned.

II. The Assembly to consist of persons elected by the people to serve for three years.

III. The Senate to consist of persons elected to serve during good behavior; their election to be made by electors chosen for that purpose by the people. In order to [do] this, the states to be divided into election districts. On the death, removal or resignation of any senator, his place to be filled out of the district from which he came.

IV. The supreme executive authority of the United States to be vested in a governor, to be elected to serve during good behavior; the election to be made by electors chosen by the people in the election districts aforesaid. The authorities and functions of the executive to be as follows: to have a negative on all laws about to be passed, and the execution of all laws passed; to have the direction of war when authorized or begun; to have, with the advice and approbation of the Senate, the power of making all treaties; to have the sole appointment of the heads or chief officers of the Departments of Finance, War, and Foreign Affairs; to have the nomination of all other officers (ambassadors to foreign nations included), subject to the approbation or rejection of the Senate; to have the power of pardoning all offenses except treason, which he shall not pardon without the approbation of the Senate.

V. On the death, resignation, or removal of the governor, his authorities to be exercised by the president of the Senate till a successor be appointed.

VI. The Senate to have the sole power of declaring war; the power of advising and approving all treaties; the power of approving or rejecting all appointments of officers, except the heads or chiefs of the Departments of Finance, War, and Foreign Affairs.

VII. The supreme judicial authority to be vested in judges, to hold their offices during good behavior, with adequate and permanent salaries. This court to have original jurisdiction in all causes of capture, and an appellate jurisdiction in all causes in which the revenues of the general government, or the citizens of foreign nations, are concerned.

VIII. The legislature of the United States to have power to institute courts in each state for the determination of all matters of general concern.

IX. The governor, senators, and all officers of the United States, to be liable to impeachment for mal- and corrupt conduct; and upon conviction to be removed from office, and disqualified for holding any place of trust or profit: all impeachments to be tried by a court to consist of the chief ———, or judge of the superior court of law of each state, provided such judge shall hold his place during good behavior and have a permanent salary.

X. All laws of the particular states contrary to the Constitution or laws of the United States to be utterly void; and the better to prevent such laws being passed, the governor or president of each state shall be appointed by the general government, and shall have a negative upon the laws about to be passed in the state of which he is the governor or president.

XI. No state to have any forces land or naval; and the militia of all the states to be under the sole and exclusive direction of the United States, the officers of which to be appointed and commissioned by them.

On these several articles he entered into explanatory observations<sup>6</sup> corresponding with the principles of his introductory reasoning.

June 19 Madison: Much stress has been laid by some gentlemen on the want of power in the Convention to propose any other than a *federal* plan. To what had been answered by others, he would only add that neither of the characteristics attached to a *federal* plan would support this objection. One characteristic was that in a *federal* government the power was exercised not on the people *individually*, but on the people *collectively*, on the states. Yet in some instances, as in piracies, captures, etc.,

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<sup>6</sup> The speech introducing the plan as above taken down and written out, was seen by Mr. Hamilton, who approved its correctness, with one or two verbal changes, which were made as he suggested. The explanatory observations which did not immediately follow, were to have been furnished by Mr. Hamilton, who did not find leisure at the time to write them out, and they were not obtained.

the existing Confederacy, and in many instances the amendments to it proposed by Mr. Paterson, must operate immediately on individuals. The other characteristic was that a *federal* government derived its appointments not immediately from the people but from the states which they respectively composed. Here, too, were facts on the other side. In two of the states, Connecticut and Rhode Island, the delegates to Congress were chosen, not by the legislatures, but by the people at large; and the plan of Mr. Paterson intended no change in this particular.

It had been alleged (by Mr. Paterson) that the Confederation, having been formed by unanimous consent, could be dissolved by unanimous consent only. Does this doctrine result from the nature of compacts? Does it arise from any particular stipulation in the Articles of Confederation? If we consider the federal Union as analogous to the fundamental compact by which individuals compose one society, and which must, in its theoretic origin at least, have been the unanimous act of the component members, it cannot be said that no dissolution of the compact can be effected without unanimous consent. A breach of the fundamental principles of the compact by a part of the society would certainly absolve the other part from their obligations to it. If the breach of *any* article by *any* of the parties does not set the others at liberty, it is because the contrary is *implied* in the compact itself, and particularly by that law of it which gives an indefinite authority to the majority to bind the whole, in all cases. This latter circumstance shows that we are not to consider the federal Union as analogous to the social compact of individuals: for if it were so, a majority would have a right to bind the rest, and even to form a new Constitution for the whole; which the gentleman from New Jersey would be among the last to admit. If we consider the federal Union as analogous, not to the social compacts among individual men, but to the conventions among individual states, what is the doctrine resulting from these conventions? Clearly, according to the expositors of the law of nations, that a breach of any one article

by any one party leaves all the other parties at liberty to consider the whole convention as dissolved, unless they choose rather to compel the delinquent party to repair the breach. In some treaties, indeed, it is expressly stipulated that a violation of particular articles shall not have this consequence, and even that particular articles shall remain in force during war which is in general understood to dissolve all subsisting treaties. But are there any exceptions of this sort to the Articles of Confederation? So far from it, that there is not even an express stipulation that force shall be used to compel an offending member of the Union to discharge its duty. He observed that the violations of the federal Articles had been numerous and notorious. Among the most notorious was an act of New Jersey herself; by which she *expressly refused* to comply with a constitutional requisition of Congress, and yielded no further to the expostulations of their deputies than barely to rescind her vote of refusal, without passing any positive act of compliance. He did not wish to draw any rigid inferences from these observations. He thought it proper, however, that the true nature of the existing Confederacy should be investigated, and he was not anxious to strengthen the foundations on which it now stands.

Proceeding to the consideration of Mr. Paterson's plan, he stated the object of a proper plan to be twofold—first, to preserve the Union; secondly, to provide a government that will remedy the evils felt by the states, both in their united and individual capacities. Examine Mr. Paterson's plan, and say whether it promises satisfaction in these respects.

1. Will it prevent the violations of the law of nations and of treaties which, if not prevented, must involve us in the calamities of foreign wars? The tendency of the states to these violations has been manifested in sundry instances. The files of Congress contain complaints already from almost every nation with which treaties have been formed. Hitherto indulgence has been shown to us. This cannot be the permanent disposition of foreign nations. A rupture with other powers is among the greatest of national calamities. It ought, there-

fore, to be effectually provided that no part of a nation shall have it in its power to bring them on the whole. The existing Confederacy does not sufficiently provide against this evil. The proposed amendment to it does not supply the omission. It leaves the will of the states as uncontrolled as ever.

2. Will it prevent encroachments on the federal authority? A tendency to such encroachments has been sufficiently exemplified among ourselves as well as in every other confederated republic, ancient and modern. By the federal Articles, transactions with the Indians appertain to Congress, yet in several instances the states have entered into treaties and wars with them. In like manner, no two or more states can form among themselves any treaties, etc., without the consent of Congress: yet Virginia and Maryland, in one instance—Pennsylvania and New Jersey in another—have entered into compacts without previous application or subsequent apology. No state, again, can of right raise troops in time of peace with[out] the like consent. Of all cases of the league, this seems to require the most scrupulous observance. Has not Massachusetts, notwithstanding, the most powerful member of the Union, already raised a body of troops? Is she not now augmenting them, without having even deigned to apprise Congress of her intentions? In fine, have we not seen the public land dealt out to Connecticut to bribe her acquiescence in the decree constitutionally awarded against her claim on the territory of Pennsylvania? For no other possible motive can account for the policy of Congress in that measure. If we recur to the examples of other confederacies, we shall find in all of them the same tendency of the parts to encroach on the authority of the whole. He then reviewed the Amphictyonic and Achaean confederacies, among the ancients, and the Helvetic, Germanic, and Belgic, among the moderns; tracing their analogy to the United States in the constitution and extent of their federal authorities; in the tendency of the particular members to usurp on these authorities, and to bring confusion and ruin on the whole. He observed that the plan of Mr. Paterson, besides omitting a control over the states, as a gen-



eral defense of the federal prerogatives, was particularly defective in two of its provisions. In the first place, its ratification was not to be by the people at large, *but by the legislatures*. It could not, therefore, render the acts of Congress, in pursuance of their powers, even legally *paramount* to the acts of the states. And in the second place, it gave to the federal tribunal an appellate jurisdiction only even in the criminal cases enumerated. The necessity of any such provision supposed a danger of undue acquittal in the state tribunals—of what avail would an appellate tribunal be after an acquittal? Besides, in the most, if not all, of the states, the executives have, by their respective *constitutions*, the right of pardoning—how could this be taken from them by a legislative ratification only?

3. Will it prevent trespasses of the states on each other? Of these enough has been already seen. He instanced acts of Virginia and Maryland, which gave a preference to their own citizens in cases where the citizens of other states are entitled to equality of privileges by the Articles of Confederation. He considered the emissions of paper money and other kindred measures as also aggressions. The states, relatively to one another, being each of them either debtor or creditor, the creditor states must suffer unjustly from every emission by the debtor states. We have seen retaliating acts on the subject which threatened danger, not to the harmony only but the tranquillity of the Union. The plan of Mr. Paterson, not giving even a negative on the acts of the states, left them as much at liberty as ever to execute their unrighteous projects against each other.

4. Will it secure the internal tranquillity of the states themselves? The insurrections in Massachusetts admonished all the states of the danger to which they were exposed. Yet the plan of Mr. Paterson contained no provisions for supplying the defect of the Confederation on this point. According to the republican theory, indeed, right and power being both vested in the majority, are held to be synonymous. According to fact and experience, a minority may, in an appeal to force,

be an overmatch for the majority—in the first place, if the minority happen to include all such as possess the skill and habits of military life, with such as possess the great pecuniary resources, one-third may conquer the remaining two-thirds; in the second place, one-third of those who participate in the choice of rulers may be rendered a majority by the accession of those whose poverty disqualifies them from a suffrage, and who, for obvious reasons, must be more ready to join the standard of sedition than that of established government; and, in the third place, where slavery exists, the republican theory becomes still more fallacious.

5. Will it secure a good internal legislation and administration to the particular states? In developing the evils which vitiate the political system of the United States, it is proper to take into view those which prevail within the states individually, as well as those which affect them collectively; since the former indirectly affect the whole, and there is great reason to believe that the pressure of them had a full share in the motives which produced the present convention. Under this head he enumerated and animadverted on, first, the multiplicity of the laws passed by the several states; secondly, the mutability of their laws; thirdly, the injustice of them; and fourthly, the impotence of them—observing that Mr. Paterson's plan contained no remedy for this dreadful class of evils, and could not therefore be received as an adequate provision for the exigencies of the community.

6. Will it secure the Union against the influence of foreign powers over its members? He pretended not to say that any such influence had yet been tried; but it was naturally to be expected that occasions would produce it. As lessons which claimed particular attention, he cited the intrigues practiced among the Amphictyonic confederates, first by the kings of Persia, and afterwards fatally by Philip of Macedon; among the Achaeans, first by Macedon, and afterwards, no less fatally, by Rome; among the Swiss, by Austria, France, and the lesser neighboring powers; among the members of the Germanic body, by France, England, Spain and Russia; and in the Belgic

republic, by all the great neighboring powers. The plan of Mr. Paterson, not giving to the general councils any negative on the will of the particular states, left the door open for the like pernicious machinations among ourselves.

7. He begged the smaller states, which were most attached to Mr. Paterson's plan, to consider the situation in which it would leave them. In the first place, they would continue to bear the whole expense of maintaining their delegates in Congress. It ought not to be said that if they were willing to bear this burden, no others had a right to complain. As far as it led the smaller states to forbear keeping up a representation, by which the public business was delayed, it was evidently a matter of common concern. An examination of the minutes of Congress would satisfy every one that the public business had been frequently delayed by this cause; and that the states most frequently unrepresented in Congress were not the larger states. He reminded the Convention of another consequence of leaving on a small state the burden of maintaining a representation in Congress. During a considerable period of the war, one of the representatives of Delaware in whom alone, before the signing of the Confederation, the entire vote of the state, and after that event one-half of its vote, frequently resided, was a citizen and resident of Pennsylvania and held an office in his own state incompatible with an appointment from it to Congress. During another period the same state was represented by three delegates, two of whom were citizens of Pennsylvania and the third a citizen of New Jersey. These expedients must have been intended to avoid the burden of supporting delegates from their own state. But whatever might have been the cause, was not in effect the vote of one state doubled, and the influence of another increased by it? In the second place the coercion on which the efficacy of the plan depends can never be exerted but on themselves. The larger states will be impregnable, the smaller only can feel the vengeance of it. He illustrated the position by the history of the Amphictyonic confederates; and the ban of the German Empire. It was the cobweb which

could entangle the weak, but would be the sport of the strong.

8. He begged them to consider the situation in which they would remain, in case their pertinacious adherence to an inadmissible plan should prevent the adoption of any plan. The contemplation of such an event was painful; but it would be prudent to submit to the task of examining it at a distance, that the means of escaping it might be the more readily embraced. Let the union of the states be dissolved, and one of two consequences must happen. Either the states must remain individually independent and sovereign, or two or more confederacies must be formed among them. In the first event, would the small states be more secure against the ambition and power of their larger neighbors than they would be under a general government pervading with equal energy every part of the empire, and having an equal interest in protecting every part against every other part? In the second, can the smaller expect that their larger neighbors would confederate with them on the principle of the present Confederacy, which gives to each member an equal suffrage; or that they would exact less severe concessions from the smaller states than are proposed in the scheme of Mr. Randolph.

The great difficulty lies in the affair of representation, and if this could be adjusted, all others would be surmountable. It was admitted by both the gentlemen from New Jersey (Mr. Brearley and Mr. Paterson) that it would not be *just to allow Virginia*, which was sixteen times as large as Delaware, an equal vote only. Their language was that it would not be *safe for Delaware* to allow Virginia sixteen times as many votes. The expedient proposed by them was that all the states should be thrown into one mass and a new partition be made into thirteen equal parts. Would such a scheme be practicable? The dissimilarities existing in the rules of property as well as in the manners, habits and prejudices of different states amounted to a prohibition of the attempt. It had been found impossible for the power of one of the most absolute princes in Europe (the King of France), directed by the wisdom of one of the most enlightened and patriotic min-

isters (Mr. Neckar) that any age has produced, to equalize, in some points only, the different usages and regulations of the different provinces. But admitting a general amalgamation and repartition of the states to be practicable, and the danger apprehended by the smaller states from a proportional representation to be real—would not a particular and voluntary coalition of these with their neighbors be less inconvenient to the whole community and equally effectual for their own safety? If New Jersey or Delaware conceived that an advantage would accrue to them from an equalization of the states, in which case they would necessarily form a junction with their neighbors, why might not this end be attained by leaving them at liberty by the Constitution to form such a junction whenever they pleased? And why should they wish to obtrude a like arrangement on all the states when it was, to say the least, extremely difficult, would be obnoxious to many of the states, and when neither the inconvenience nor the benefit of the expedient to themselves would be lessened by confining it to themselves? The prospect of many new states to the westward was another consideration of importance. If they should come into the Union at all, they would come when they contained but few inhabitants. If they should be entitled to vote according to their proportion of inhabitants, all would be right and safe. Let them have an equal vote, and a more objectionable minority than ever might give law to the whole.

On the question, moved by Mr. King, whether the Committee should rise and Mr. Randolph's proposition be reported without alteration, which was in fact a question whether Mr. Randolph's should be adhered to as preferable to those of Mr. Paterson: Yeas 7 (Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia); nays 3 (New York, New Jersey, Delaware); divided 1 (Maryland).

## ANALYSIS OF ARGUMENTS ON THE TWO PLANS

[Insertion by Compiler]

Supporters of the New Jersey plan invoked existing laws as determining factors in the drafting process. They felt obligated, as Paterson put it, to speak the sentiments of the people who sent them, not their own sentiments. They found in the credentials of delegates an imperative mandate to improve the Articles of Confederation by amendment, not to displace them with a new system. If directions of a principal are legally binding on an agent, this contention was sound; but it overlooked the fact that the Virginia plan asserted the right of the real principal to accept or reject the work of an agent in the great task of constitution-making, an assertion sustained by principles of political science, and by the practice of states where the right of the people to pass directly on drafts approved by constitutional conventions was recognized as a fundamental of popular government. The champions of the New Jersey plan were legalists, either on principle or for policy.

On the other hand, supporters of the Virginia plan relied on existing need as the determining factor in the drafting process. They accepted Wilson's conception of the Convention's power—namely, that it was authorized to conclude nothing, but might propose anything. As stated by Randolph, this conviction obligated them, when the salvation of the republic was at stake, to propose what they deemed necessary. They asserted the right of the people, acting through conventions assembled for that purpose in the several states, to make the final decision. The proponents of the Virginia plan were statesmen in the best sense of that word.

Champions of the New Jersey plan stressed the loss of sovereignty and legal equality by the states under the Virginia proposals, the consequent hostility of public sentiment, and the probable rejection of the whole scheme. This argument ignored the logic of events and the persuasive power of leadership in ratifying conventions. Complete sovereignty of states was the inherent defect of the Articles of Confederation that the Vir-

ginia plan was designed to remedy. But it was claimed that because these Articles were unanimously made they must be unanimously unmade. To this Madison replied that violation of any provision under which individuals are bound into one society by compact, or states are brought into a union by treaty, would justify dissolution in accordance with the compact theory in the one case, the law of nations in the other—and he called attention to “numerous and notorious” violations which had made the Articles unworkable.

Other arguments against the Virginia plan were the proposal of a bicameral legislature with proportional representation in both branches, the power of the national legislature to negative state laws, the enormous expense of the new system, and the impossibility of equalizing under the Articles the size of states except by throwing them into hotchpotch. Subsequent developments proved the correctness of the objections to proportional representation in both branches, the negative on state laws, and the expense of a federal system. The curious claim that states must be thrown into hotchpotch to avoid certain consequences of geographical inequality was a *non sequitur* of some value as parliamentary strategy.

Other points made by supporters of the Virginia plan in this crucial debate are Wilson’s terse contrasts of the schemes under consideration—impossible to condense further or paraphrase, but very effective in visualizing features of the two plans to the disadvantage of the proposed substitute—his claim that Congress as a single legislative body might exercise tyrannical powers without such checks as the Virginia plan provided; and Randolph’s condemnation of coercion as the ultimate sanction for making the will of Congress operative in the states.

Madison’s powerful indictment of the New Jersey plan is particularly noteworthy. Paraphrasing the questions that his arguments answered, he demonstrated the inability of that plan to prevent violations of the law of nations and of treaties; to frustrate encroachments on federal authority; to forbid trespasses of states on each other; to secure the internal tranquillity of states; to promote good internal legislation and administration in the

states; and to guard the Union against the influence of foreign powers on states. He directed attention to the burden it placed on the states of maintaining their delegates in Congress, and the danger to the public interest of withholding representation for reasons of economy. Finally he pictured vividly the deplorable condition of small states if "pertinacious adherence to an inadmissible plan should prevent the adoption of any plan." This masterful exposition was, without further discussion, followed by a vote rejecting the New Jersey plan by more than two to one.

The remarkable discourse of Alexander Hamilton is in several respects the finest specimen of independent thinking recorded in Madison's Notes. He found himself opposed to the sentiments expressed by his colleagues from New York. He felt obliged to declare himself unfriendly to both plans before the Committee of the Whole. Although he recognized the necessity of a republic for the government of this country, he opposed a federal system, invoking the political axiom that two sovereignties cannot co-exist within the same limits. He was a proponent of a *national* government, far removed in principle from that advocated by such constructive leaders as Madison and Wilson whose efforts were rewarded by the establishment of a workable federal government. With mathematical precision he elucidated certain principles declared essential to the support of government, and showed how each operates to the disadvantage of the Union in a federal system. The principles he used for this purpose are: (1) an active and constant interest in supporting government; (2) love of power; (3) an habitual attachment of the people; (4) force, which is either the coercion of laws or the coercion of arms; (5) dispensation of honors or emoluments. The light of history permits us to get from the operation of these principles different results.

Hamilton's admiration for the British government leads him to approach its model as closely as republican principles will permit. He defines a republic as a government all of whose magistrates are appointed and vacancies are filled by the people or a process of election originating with the people. His plan for such a government included an executive indirectly elected for life,



an assembly directly elected for three years, a senate indirectly elected to serve during good behavior, an appointed judiciary to serve during good behavior, and executives of states appointed by the national executive.

Comment on the attitude of delegates towards popular government seems appropriate here. Praise of the British system was general, but all believed that a republic must be established in the United States. There was a permeating distrust of democracy which ignored the fact that a republic is an attenuated democracy, with certain defects of its own. They failed to foresee the necessity of a party system, and to guard against its evils. The result was perennial party organizations, maintained as ends in themselves by parasitic practices, and producing biennially and quadrennially a crop of candidates who rely more on political jugglery than on the enlightenment of the public. This lack of prophetic foresight has made America a stronghold for bosses and spoilsmen.

## CHAPTER 3

### STAGES IN THE DEVELOPMENT OF THE VIRGINIA PLAN

#### DEVELOPMENT OF PRELIMINARIES

[This important preparatory stage began with the introduction of the Virginia plan on May 29, and ended with the report of the Committee of the Whole on June 19. During that period the Convention in Committee of the Whole considered the resolutions of the Virginia plan seriatim, with frequent reconsiderations, listened with great profit to the discussions of its creative thinkers, acted with sound judgment for the most part on propositions brought to a vote, and developed a perspective of a federal system which dominated subsequent proceedings, despite dangerous onslaughts and insidious chiselings. The value of the committee's deliberations may be measured, first, by the votes of silent delegates which in every case determined results; second, by the quality of the decisions themselves; and third, by the correlation of agreements reached. With very few exceptions, the recommendations of the Committee of the Whole became the foundation of the new federal superstructure.]

#### REPORT OF COMMITTEE OF THE WHOLE

1. Resolved, that it is the opinion of this committee that a national government ought to be established, consisting of a supreme legislative, executive and judiciary.
2. Resolved, that the national legislature ought to consist of two branches.

3. Resolved, that the members of the first branch of the national legislature ought to be elected by the people of the several states for the term of three years, to receive fixed stipends by which they may be compensated for the devotion of their time to the public service, to be paid out of the national treasury: to be ineligible to any office established by a particular state, or under the authority of the United States (except those peculiarly belonging to the functions of the first branch), during the term of service, and under the national government for the space of one year after its expiration.

4. Resolved, that the members of the second branch of the national legislature ought to be chosen by the individual legislatures, to be of the age of thirty years at least, to hold their offices for a term sufficient to ensure their independence, namely, seven years, to receive fixed stipends by which they may be compensated for the devotion of their time to the public service to be paid out of the national treasury; to be ineligible to any office established by a particular state, or under the authority of the United States (except those peculiarly belonging to the functions of the second branch) during the term of service, and under the national government for the space of one year after its expiration.

5. Resolved, that each branch ought to possess the right of originating acts.

6. Resolved, that the national legislature ought to be empowered to enjoy the legislative rights vested in Congress by the Confederation, and moreover to legislate in all cases to which the separate states are incompetent; or in which the harmony of the United States may be interrupted by the exercise of individual legislation; to negative all laws passed by the several states contravening in the opinion of the national legislature, the Articles of Union, or any treaties subsisting under the authority of the Union.

7. Resolved, that the rights of suffrage in the first branch of the national legislature ought not to be according to the rule established in the Articles of Confederation but according to some equitable ratio of representation, namely, in proportion to the whole number of white and other free citizens and inhab-

itants, of every age, sex, and condition, including those bound to servitude for a term of years, and three-fifths of all other persons, not comprehended in the foregoing description, except Indians not paying taxes in each state.

8. Resolved, that the right of suffrage in the second branch of the national legislature ought to be according to the rule established for the first.

9. Resolved, that a national executive be instituted to consist of a single person, to be chosen by the national legislature for the term of seven years, with power to carry into execution the national laws, to appoint to offices in cases not otherwise provided for—to be ineligible a second time, and to be removable on impeachment and conviction of malpractices or neglect of duty—to receive a fixed stipend by which he may be compensated for the devotion of his time to the public service to be paid out of the national treasury.

10. Resolved, that the national executive shall have a right to negative any legislative act which shall not be afterwards passed by two-thirds of each branch of the national legislature.

11. Resolved, that a national judiciary be established, to consist of one supreme tribunal, the judges of which shall be appointed by the second branch of the national legislature, to hold their offices during good behavior, and to receive punctually at stated times a fixed compensation for their services, in which no increase or diminution shall be made, so as to affect the persons actually in office at the time of such increase or diminution.

12. Resolved, that the national legislature be empowered to appoint inferior tribunals.

13. Resolved, that the jurisdiction of the national judiciary shall extend to all cases which respect the collection of the national revenue, impeachments of any national officers, and questions which involve the national peace and harmony.

14. Resolved, that provision ought to be made for the admission of states lawfully arising within the limits of the United States, whether from a voluntary junction of government and territory or otherwise, with the consent of a number of voices in the national legislature less than the whole.

15. Resolved, that provision ought to be made for the continuance of Congress and their authorities and privileges until a given day after the reform of the Articles of Union shall be adopted and for the completion of all their engagements.

16. Resolved, that a republican constitution and its existing laws ought to be guaranteed to each state by the United States.

17. Resolved, that provision ought to be made for the amendment of the Articles of Union whensoever it shall seem necessary.

18. Resolved, that the legislative, executive and judiciary powers within the several states ought to be bound by oath to support the Articles of Union.

19. Resolved, that the amendments which shall be offered to the Confederation by the Convention ought at a proper time or times after the approbation of Congress to be submitted to an assembly or assemblies recommended by the several legislatures to be expressly chosen by the people to consider and decide thereon.

#### DEVELOPMENT OF FUNDAMENTALS

[This stage is so called because the Convention devoted its sessions to the discussion of fundamentals from June 19 to July 26. Naturally, it made the recommendations of the Committee of the Whole the basis of these deliberations. Wisely it avoided the consideration of details. Structural fundamentals were agreed upon without difficulty, notwithstanding efforts to approve certain features of the existing Confederation. Crucial differences arose on the question of representation, especially in the Senate. Fortunately these difficulties were compromised with the assistance of special committees, and the most threatening obstacle to the development of the new federal system was thereby removed. These fundamentals were embodied in twenty-three resolutions which were referred to the Committee of Detail on July 26.]

#### FUNDAMENTALS REFERRED TO COMMITTEE OF DETAIL

1. Resolved, that the government of the United States ought to consist of a supreme legislative, judiciary, and executive.

2. Resolved, that the legislature consist of two branches.

3. Resolved, that the members of the first branch of the legislature ought to be elected by the people of the several states, for the term of two years; to be paid out of the public treasury; to receive an adequate compensation for their services; to be of the age of twenty-five years at least; to be ineligible to and incapable of holding any office under the authority of the United States (except those peculiarly belonging to the functions of the first branch) during the term of service of the first branch.

4. Resolved, that the members of the second branch of the legislature of the United States ought to be chosen by the individual legislatures; to be of the age of thirty years at least; to hold their offices for six years, one-third to go out biennially; to receive a compensation for the devotion of their time to the public service; to be ineligible to and incapable of holding any office, under the authority of the United States (except those peculiarly belonging to the functions of the second branch), during the term for which they are elected, and for one year thereafter.

5. Resolved, that each branch ought to possess the right of originating acts.

6. Resolved, that the national legislature ought to possess the legislative rights vested in Congress by the Confederation; and moreover, to legislate in all cases for the general interests of the Union, and also in those to which the states are separately incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual legislation.

7. Resolved, that the legislative acts of the United States, made by virtue and in pursuance of the Articles of Union, and all treaties made and ratified under the authority of the United States, shall be the supreme law of the respective states, as far as those acts or treaties shall relate to the said states, or their citizens and inhabitants; and that the judiciaries of the several states shall be bound thereby in their decisions, any thing in the respective laws of the individual states to the contrary, notwithstanding.

8. Resolved, that in the original formation of the legislature of the United States, the first branch thereof shall consist of sixty-five members; of which number

New Hampshire shall send three,  
Massachusetts ..... eight,  
Rhode Island ..... one,  
Connecticut ..... five,  
New York ..... six,  
New Jersey ..... four,  
Pennsylvania ..... eight,  
Delaware ..... one,  
Maryland ..... six,  
Virginia ..... ten,  
North Carolina ..... five,  
South Carolina ..... five,  
Georgia ..... three.

But as the present situation of the states may probably alter in the number of their inhabitants, the legislature of the United States shall be authorized, from time to time, to apportion the number of representatives; and in case any of the states shall hereafter be divided, or enlarged by addition of territory, or any two or more states united, or any new states created within the limits of the United States, the legislature of the United States shall possess authority to regulate the number of representatives, in any of the foregoing cases, upon the principle of their number of inhabitants according to the provisions hereafter mentioned, namely, provided always that representation ought to be proportioned to direct taxation. And in order to ascertain the alteration in the direct taxation which may be required from time to time by the changes in the relative circumstances of the states—

9. Resolved, that a census be taken within six years from the first meeting of the legislature of the United States, and once within the term of every ten years afterwards, of all the inhabitants of the United States, in the manner and according to the ratio recommended by Congress in their resolution of April 18, 1783; and that the legislature of the United States shall proportion the direct taxation accordingly.

10. Resolved, that all bills for raising or appropriating money, and for fixing the salaries of the officers of the government of the United States, shall originate in the first branch of the legis-

lature of the United States, and shall not be altered or amended by the second branch; and that no money shall be drawn from the public treasury, but in pursuance of appropriations to be originated by the first branch.

11. Resolved, that in the second branch of the legislature of the United States, each state shall have an equal vote.

12. Resolved, that a national executive be instituted, to consist of a single person; to be chosen by the national legislature, for the term of seven years; to be ineligible a second time; with power to carry into execution the national laws; to appoint to offices in cases not otherwise provided for; to be removable on impeachment, and conviction of malpractice or neglect of duty; to receive a fixed compensation for the devotion of his time to the public service; to be paid out of the public treasury.

13. Resolved, that the national executive shall have a right to negative any legislative act, which shall not be afterwards passed, unless by two-third parts of each branch of the national legislature.

14. Resolved, that a national judiciary be established, to consist of one supreme tribunal, the judges of which shall be appointed by the second branch of the national legislature; to hold their offices during good behavior; to receive punctually, at stated times, a fixed compensation for their services, in which no diminution shall be made, so as to affect the persons actually in office at the time of such diminution.

15. Resolved, that the national legislature be empowered to appoint inferior tribunals.

16. Resolved, that the jurisdiction of the national judiciary shall extend to cases arising under laws passed by the general legislature; and to such other questions as involve the national peace and harmony.

17. Resolved, that provision ought to be made for the admission of states lawfully arising within the limits of the United States, whether from a voluntary junction of government and territory, or otherwise, with the consent of a number of voices in the national legislature less than the whole.

18. Resolved, that a republican form of government shall be



guaranteed to each state; and that each state shall be protected against foreign and domestic violence.

19. Resolved, that provision ought to be made for the amendment of the Articles of Union, whensoever it shall seem necessary.

20. Resolved, that the legislature, executive, and judiciary powers within the several states and of the national government, ought to be bound, by oath, to support the Articles of Union.

21. Resolved, that the amendments which shall be offered to the Confederation by the Convention ought, at a proper time or times after the approbation of Congress, to be submitted to an assembly or assemblies of representatives, recommended by the several legislatures, to be expressly chosen by the people to consider and decide thereon.

22. Resolved, that the representation in the second branch of the legislature of the United States shall consist of two members from each state, who shall vote per capita.

23. Resolved, that it be an instruction to the committee, to whom were referred the proceedings of the Convention for the establishment of a national government, to receive a clause or clauses, requiring certain qualifications of property and citizenship, in the United States, for the executive, the judiciary, and the members of both branches of the legislature of the United States.

#### DEVELOPMENT OF DETAILS

[Delegates, deliberating in Committee of the Whole and in convention, had directly and immediately determined the fundamentals they wished to embody in the constitution they were framing. But the task of supplementing these fundamentals with appropriate details could not be as well done by a relatively large body as by a select committee, hence the appointment on July 24 of a Committee of Detail. Its personnel is portrayed in Chapter 1. For ten days this able committee carried on the work of drafting, conferring, revising, and selecting from pertinent sources, material for their report. Apparently, Randolph and Wilson did the drafting, Rutledge as chairman recorded revi-

sions, Ellsworth and Gorham contributed suggestions. They drew upon the Articles of Confederation, the Pinckney plan, the New Jersey plan, and state constitutions, especially that of New York, for substantive parts of their report. In some instances they went beyond instructions contained in the resolutions on fundamentals, but in general their work conformed to those resolutions. Their elaboration of the broad principle of national power into an enumeration of eighteen specific powers was their outstanding contribution to the substance of the completed Constitution. The Convention devoted its sessions to the deliberations of this stage from August 6 to September 10, inclusive, meeting every day except Sunday.]

#### REPORT OF COMMITTEE OF DETAIL

We the people of the states of New Hampshire, Massachusetts, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, do ordain, declare, and establish the following Constitution for the government of ourselves and our posterity.

#### ARTICLE I

The style of the government shall be, "The United States of America."

#### ARTICLE II

The government shall consist of supreme legislative, executive, and judicial powers.

#### ARTICLE III

The legislative power shall be vested in a Congress, to consist of two separate and distinct bodies of men, a House of Representatives and a Senate; each of which shall in all cases have a negative on the other. The legislature shall meet on the first Monday in December in every year.

#### ARTICLE IV

Section 1. The members of the House of Representatives shall

be chosen every second year, by the people of the several states comprehended within this Union. The qualifications of the electors shall be the same, from time to time, as those of the electors in the several states, of the most numerous branch of their own legislatures.

Section 2. Every member of the House of Representatives shall be of the age of twenty-five years at least; shall have been a citizen in the United States for at least three years before his election; and shall be, at the time of his election, a resident of the state in which he shall be chosen.

Section 3. The House of Representatives shall, at its first formation, and until the number of citizens and inhabitants shall be taken in the manner hereinafter described, consist of sixty-five members, of whom three shall be chosen in New Hampshire, eight in Massachusetts, one in Rhode Island and Providence Plantations, five in Connecticut, six in New York, four in New Jersey, eight in Pennsylvania, one in Delaware, six in Maryland, ten in Virginia, five in North Carolina, five in South Carolina, and three in Georgia.

Section 4. As the proportions of numbers in different states will alter from time to time; as some of the states may hereafter be divided; as others may be enlarged by addition of territory; as two or more states may be united; as new states will be erected within the limits of the United States, the legislature shall, in each of these cases, regulate the number of representatives by the number of inhabitants, according to the provisions hereinafter made, at the rate of one for every forty thousand.

Section 5. All bills for raising or appropriating money, and for fixing the salaries of the officers of government, shall originate in the House of Representatives, and shall not be altered or amended by the Senate. No money shall be drawn from the public treasury but in pursuance of appropriations that shall originate in the House of Representatives.

Section 6. The House of Representatives shall have the sole power of impeachment. It shall choose its Speaker and other officers.

Section 7. Vacancies in the House of Representatives shall

be supplied by writs of election from the executive authority of the state, in the representation from which they shall happen.

#### ARTICLE V

Section 1. The Senate of the United States shall be chosen by the legislatures of the several states. Each legislature shall choose two members. Vacancies may be supplied by the executive until the next meeting of the legislature. Each member shall have one vote.

Section 2. The senators shall be chosen for six years; but immediately after the first election they shall be divided, by lot, into three classes, as nearly as may be, numbered one, two, and three. The seats of the members of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, of the third class at the expiration of the sixth year, so that a third part of the members may be chosen every second year.

Section 3. Every member of the Senate shall be of the age of thirty years at least; shall have been a citizen in the United States for at least four years before his election; and shall be, at the time of his election, a resident of the state for which he shall be chosen.

Section 4. The Senate shall choose its own president and other officers.

#### ARTICLE VI

Section 1. The times and places and manner of holding the elections of the members of each house shall be prescribed by the legislature of each state; but their provisions concerning them may, at any time, be altered by the legislature of the United States.

Section 2. The legislature of the United States shall have authority to establish such uniform qualifications of the members of each house, with regard to property, as to the said legislature shall seem expedient.

Section 3. In each house a majority of the members shall constitute a quorum to do business; but a smaller number may adjourn from day to day.

Section 4. Each house shall be the judge of the elections, returns and qualifications of its own members.

Section 5. Freedom of speech and debate in the legislature shall not be impeached or questioned in any court or place out of the legislature; and the members of each house shall, in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at Congress, and in going to and returning from it.

Section 6. Each house may determine the rules of its proceedings; may punish its members for disorderly behavior; and may expel a member.

Section 7. The House of Representatives, and the Senate, when it shall be acting in a legislative capacity, shall keep a journal of their proceedings, and shall, from time to time, publish them: and the yeas and nays of the members of each house, on any question, shall at the desire of one-fifth part of the members present, be entered on the journal.

Section 8. Neither house, without the consent of the other, shall adjourn for more than three days, nor to any other place than that at which the two houses are sitting. But this regulation shall not extend to the Senate, when it shall exercise the powers mentioned in the ——— article.

Section 9. The members of each house shall be ineligible to, and incapable of holding any office under the authority of the United States, during the time for which they shall respectively be elected: and the members of the Senate shall be ineligible to, and incapable of holding any such office for one year afterwards.

Section 10. The members of each house shall receive a compensation for their services, to be ascertained and paid by the state in which they shall be chosen.

Section 11. The enacting style of the laws of the United States shall be, "Be it enacted, and it is hereby enacted, by the House of Representatives, and by the Senate of the United States, in Congress assembled."

Section 12. Each house shall possess the right of originating bills, except in the cases before-mentioned.

Section 13. Every bill which shall have passed the House of Representatives and the Senate shall, before it becomes a law, be presented to the President of the United States for his revision: if, upon such revision, he approve of it, he shall signify his approbation by signing it: But if, upon such revision, it shall appear to him improper for being passed into a law, he shall return it, together with his objections against it, to that house in which it shall have originated, who shall enter the objections at large on their journal and proceed to reconsider the bill. But if, after such reconsideration, two-thirds of that house shall, notwithstanding the objections of the President, agree to pass it, it shall together with his objections, be sent to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of the other house also, it shall become a law. But in all such cases, the votes of both houses shall be determined by yeas and nays; and the names of the persons voting for or against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the President within seven days after it shall have been presented to him, it shall be a law, unless the legislature, by their adjournment, prevent its return; in which case it shall not be a law.

#### ARTICLE VII

Section 1. The legislature of the United States shall have the power to lay and collect taxes, duties, imposts and excises;

To regulate commerce with foreign nations, and among the several states;

To establish an uniform rule of naturalization throughout the United States;

To coin money;

To regulate the value of foreign coin;

To fix the standard of weights and measures;

To establish post offices;

To borrow money, and emit bills on the credit of the United States;

To appoint a treasurer by ballot;

To constitute tribunals inferior to the Supreme Court;

To make rules concerning captures on land and water;

To declare the law and punishment of piracies and felonies committed on the high seas, and the punishment of counterfeiting the coin of the United States, and of offenses against the law of nations;

To subdue a rebellion in any state, on the application of its legislature;

To make war;

To raise armies;

To build and equip fleets;

To call forth the aid of the militia, in order to execute the laws of the Union, enforce treaties, suppress insurrections, and repel invasions.

And to make all laws that shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or office thereof.

Section 2. Treason against the United States shall consist only in levying war against the United States, or any of them; and in adhering to the enemies of the United States, or any of them. The legislature of the United States shall have power to declare the punishment of treason. No person shall be convicted of treason unless on the testimony of two witnesses. No attainder of treason shall work corruption of blood, nor forfeiture, except during the life of the person attainted.

Section 3. The proportions of direct taxation shall be regulated by the whole number of white and other free citizens and inhabitants, of every age, sex and condition, including those bound to servitude for a term of years, and three-fifths of all other persons not comprehended in the foregoing description (except Indians not paying taxes), which number shall, within six years after the first meeting of the legislature, and within the term of every ten years afterwards, be taken in such a manner as the said legislature shall direct.

Section 4. No tax or duty shall be laid by the legislature on articles exported from any state; nor on the migration or importation of such persons as the several states shall think proper

to admit; nor shall such migration or importation be prohibited.

Section 5. No capitation tax shall be laid, unless in proportion to the census hereinbefore directed to be taken.

Section 6. No navigation act shall be passed without the assent of two-thirds of the members present in the each house.

Section 7. The United States shall not grant any title of nobility.

#### ARTICLE VIII

The acts of the legislature of the United States made in pursuance of this Constitution, and all treaties made under the authority of the United States shall be the supreme law of the several states, and of their citizens and inhabitants; and the judges in the several states shall be bound thereby in their decisions; any thing in the constitutions or laws of the several states to the contrary notwithstanding.

#### ARTICLE IX

Section 1. The Senate of the United States shall have power to make treaties, and to appoint ambassadors and judges of the Supreme Court.

Section 2. In all disputes and controversies now subsisting, or that may hereafter subsist between two or more states, respecting jurisdiction or territory, the Senate shall possess the following powers. Whenever the legislature, or the executive authority, or lawful agent of any state, in controversy with another, shall by memorial to the Senate, state the matter in question, and apply for a hearing, notice of such memorial and application shall be given by order of the Senate to the legislature or the executive authority of the other state in controversy. The Senate shall also assign a day for the appearance of the parties, by their agents, before that house. The agents shall be directed to appoint, by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question. But if the agents cannot agree, the Senate shall name three persons out of each of the several states; and from the list of such persons each party shall alternately strike out one, until the number shall be reduced to thirteen; and from that number not less than seven



nor more than nine names, as the Senate shall direct, shall in their presence, be drawn out by lot; and the persons whose names shall be so drawn, or any five of them shall be commissioners or judges to hear and finally determine the controversy; provided a majority of the judges who shall hear the cause agree in the determination. If either party shall neglect to attend at the day assigned, without showing sufficient reasons for not attending, or being present shall refuse to strike, the Senate shall proceed to nominate three persons out of each state, and the clerk of the Senate shall strike in behalf of the party absent or refusing. If any of the parties shall refuse to submit to the authority of such court; or shall not appear to prosecute or defend their claim or cause, the court shall nevertheless proceed to pronounce judgment. The judgment shall be final and conclusive. The proceedings shall be transmitted to the president of the Senate, and shall be lodged among the public records, for the security of the parties concerned. Every commissioner shall, before he sit in judgment, take an oath, to be administered by one of the judges of the supreme or superior court of the state where the cause shall be tried, "well and truly to hear and determine the matter in question according to the best of his judgment, without favor, affection, or hope of reward."

Section 3. All controversies concerning lands claimed under different grants of two or more states, whose jurisdictions, as they respect such lands shall have been decided or adjusted subsequently to such grants, or any of them, shall, on application to the Senate, be finally determined, as near as may be, in the same manner as is before prescribed for deciding controversies between different states.

#### ARTICLE X

Section 1. The executive power of the United States shall be vested in a single person. His style shall be, "The President of the United States of America"; and his title shall be, "His Excellency." He shall be elected by ballot by the legislature. He shall hold his office during the term of seven years; but shall not be elected a second time.

Section 2. He shall, from time to time, give information to the legislature of the state of the Union: he may recommend to their consideration such measures as he shall judge necessary and expedient: he may convene them on extraordinary occasions. In case of disagreement between the two houses with regard to the time of adjournment, he may adjourn them to such time as he thinks proper: he shall take care that the laws of the United States be duly and faithfully executed: he shall commission all the officers of the United States; and shall appoint officers in all cases not otherwise provided for by this Constitution. He shall receive ambassadors, and may correspond with the supreme executives of the several states. He shall have power to grant reprieves and pardons; but his pardon shall not be pleadable in bar of an impeachment. He shall be Commander-in-Chief of the Army and Navy of the United States, and of the militia of the several states. He shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during his continuance in office. Before he shall enter on the duties of his department, he shall take the following oath or affirmation, "I —— solemnly swear (or affirm) that I will faithfully execute the office of President of the United States of America." He shall be removed from his office on impeachment by the House of Representatives, and conviction in the Supreme Court, of treason, bribery, or corruption. In case of his removal as aforesaid, death, resignation, or disability to discharge the powers and duties of his office, the president of the Senate shall exercise those powers and duties until another President of the United States be chosen, or until the disability of the President be removed.

#### ARTICLE XI

Section 1. The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as shall, when necessary, from time to time, be constituted by the legislature of the United States.

Section 2. The judges of the Supreme Court, and of the inferior courts, shall hold their offices during good behavior.

They shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

Section 3. The jurisdiction of the Supreme Court shall extend to all cases arising under laws passed by the legislature of the United States; to all cases affecting ambassadors, other public ministers and consuls; to the trial of impeachments of officers of the United States; to all cases of admiralty and maritime jurisdiction; to controversies between two or more states (except such as shall regard territory or jurisdiction), between a state and citizens of another state, between citizens of different states, and between a state or the citizens thereof and foreign states, citizens or subjects. In cases of impeachment, cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, this jurisdiction shall be original. In all the other cases before-mentioned, it shall be appellate, with such exceptions and under such regulations as the legislature shall make. The legislature may assign any part of the jurisdiction above-mentioned (except the trial of the President of the United States) in the manner, and under the limitations which it shall think proper, to such inferior courts as it shall constitute from time to time.

Section 4. The trial of all criminal offenses (except in cases of impeachments) shall be in the state where they shall be committed; and shall be by jury.

Section 5. Judgment, in cases of impeachment, shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust or profit under the United States. But the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment and punishment according to law.

#### ARTICLE XII

No state shall coin money; nor grant letters of marque and reprisal; nor enter into any treaty, alliance, or confederation; nor grant any title of nobility.

## ARTICLE XIII

No state, without the consent of the legislature of the United States, shall emit bills of credit, or make any thing but specie a tender in payment of debts; nor lay imposts or duties on imports; nor keep troops or ships of war in time of peace; nor enter into any agreement or compact with another state, or with any foreign power; nor engage in any war, unless it shall be actually invaded by enemies, or the danger of invasion be so imminent as not to admit of delay until the legislature of the United States can be consulted.

## ARTICLE XIV

The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

## ARTICLE XV

Any person charged with treason, felony, or high misdemeanor in any state, who shall flee from justice, and shall be found in any other state, shall, on demand of the executive power of the state from which he fled, be delivered up and removed to the state having jurisdiction of the offense.

## ARTICLE XVI

Full faith shall be given in each state to the acts of the legislatures, and to the records and judicial proceedings of the courts and magistrates of every other state.

## ARTICLE XVII

New states lawfully constituted or established within the limits of the United States may be admitted, by the legislature, into this government; but to such admission, the consent of two-thirds of the members present in each house shall be necessary. If a new state shall arise within the limits of any of the present states, the consent of the legislatures of such states shall be also necessary to its admission. If the admission be consented to, the new states shall be admitted on the same terms with the original states. But the legislature may make conditions with the new states concerning the public debt which shall be then subsisting.

## ARTICLE XVIII

The United States shall guarantee to each state a republican form of government; and shall protect each state against foreign invasions, and, on the application of its legislature, against domestic violence.

## ARTICLE XIX

On the application of the legislatures of two-thirds of the states in the Union for an amendment of this Constitution, the legislature of the United States shall call a convention for that purpose.

## ARTICLE XX

The members of the legislatures, and the executive and judicial officers of the United States, and of the several states, shall be bound by oath to support this Constitution.

## ARTICLE XXI

The ratifications of the conventions of —— states shall be sufficient for organizing this Constitution.

## ARTICLE XXII

This Constitution shall be laid before the United States in Congress assembled, for their approbation; and it is the opinion of this Convention that it should be afterwards submitted to a convention chosen in each state, under the recommendation of its legislature, in order to receive the ratification of such convention.

## ARTICLE XXIII

To introduce this government, it is the opinion of this Convention that each assenting convention should notify its assent and ratification to the United States in Congress assembled; that Congress, after receiving the assent and ratification of the conventions of —— states, should appoint and publish a day, as early as may be, and appoint a place for commencing proceedings under this Constitution; that after such publication, the legislatures of the several states should elect members of the

Senate, and direct the election of members of the House of Representatives; and that the members of the legislature should meet at the time and place assigned by Congress, and should, as soon as may be, after their meeting, choose the President of the United States, and proceed to execute this Constitution.

#### CONCLUDING DELIBERATIONS

[The prolonged processes of modification, elaboration, and correlation that took place during the stage when the report of the Committee of Detail was under consideration developed the need for a special committee to arrange final decisions in logical order, and to phrase them concisely and precisely. Hence arose the distinguished Committee on Style and Arrangement explained elsewhere (Chapter 1). On Monday, September 10, the final session of the Convention devoted to the elaboration of details was held. On Wednesday, September 12, the report of this Committee on Style and Arrangement was made. In this incredibly short time Gouverneur Morris, to whom the task of preparation had been given by Dr. Johnson as chairman, drafted the celebrated document which became, with few changes, the completed Constitution. It deserves the praise that has been given it, although its arrangement of provisions is not perfect. In four days after receiving it, the Convention scrutinized its parts and compared them with the proceedings referred to the committee. By September 17 this work was completed and the final draft was unanimously approved by the states represented on that day.]

#### REPORT OF COMMITTEE ON STYLE AND ARRANGEMENT

We, the people of the United States, in order to form a more perfect union, to establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

## ARTICLE I

Section 1. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 2. The House of Representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to servitude for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every forty thousand, but each state shall have at least one representative: and until such enumeration shall be made, the state of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

The House of Representatives shall choose their Speaker and other officers; and they shall have the sole power of impeachment.

Section 3. The Senate of the United States shall be com-

posed of two senators from each state, chosen by the legislature thereof, for six years: and each senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided by lot as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year: and if vacancies happen by resignation or otherwise during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature.

No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

The Vice President of the United States shall be ex officio president of the Senate, but shall have no vote unless they be equally divided.

The Senate shall choose their other officers, and also a president pro tempore, in the absence of the Vice President, or when he shall exercise the office of President of the United States.

The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath. When the President of the United States is tried, the Chief Justice shall preside: And no person shall be convicted without the concurrence of two-thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

Section 4. The times, places and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof: but the Congress may at any time by law make or alter such regulations.



The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

Section 5. Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business: but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each house may provide.

Each house may determine the rules of its proceedings; punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house on any question shall, at the desire of one-fifth of those present, be entered on the journal.

Neither house, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

Section 6. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office.

Section 7. The enacting style of the laws shall be, "Be it

enacted by the senators and representatives in Congress assembled."

All bills for raising revenue shall originate in the House of Representatives: but the Senate may propose or concur with amendments as on other bills.

Every bill which shall have passed the House of Representatives and the Senate shall, before it become a law, be presented to the President of the United States. If he approve, he shall sign it, but if not, he shall return it, with his objections to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases, the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by three-fourths of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

Section 8. The Congress may by joint ballot appoint a treasurer. They shall have power

To lay and collect taxes, duties, imposts and excises; to pay the debts and provide for the common defense and general welfare of the United States.

To borrow money on the credit of the United States.

To regulate commerce with foreign nations, among the several states, and with the Indian tribes.

To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States.

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures.

To provide for the punishment of counterfeiting the securities and current coin of the United States.

To establish post offices and post roads.

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.

To constitute tribunals inferior to the Supreme Court.

To define and punish piracies and felonies committed on the high seas, and punish offenses against the law of nations.

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water.

To raise and support armies: but no appropriation of money to that use shall be for a longer term than two years.

To provide and maintain a navy.

To make rules for the government and regulation of the land and naval forces.

To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions.

To provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress.

To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of

forts, magazines, arsenals, dockyards, and other needful buildings; and—

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

Section 9. The migration or importation of such persons as the several states now existing shall think proper to admit shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

No bill of attainder shall be passed, nor any ex post facto law.

No capitation tax shall be laid, unless in proportion to the census herein before directed to be taken.

No tax or duty shall be laid on articles exported from any state.

No money shall be drawn from the treasury but in consequence of appropriations made by law.

No title of nobility shall be granted by the United States. And no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

Section 10. No state shall coin money or emit bills of credit, or make any thing but gold or silver coin a tender in payment of debts, or pass any bill of attainder, or ex post facto laws, or laws altering or impairing the obligation of contracts; or grant letters of marque and reprisal, or enter into any treaty, alliance, or confederation, or grant any title of nobility.

No state shall, without the consent of Congress, lay imposts or duties on imports or exports, or with such consent, but to the use of the treasury of the United States. Or keep troops or ships

of war in time of peace, or enter into any agreement or compact with another state, or with any foreign power. Or engage in any war, unless it shall be actually invaded by enemies, or the danger of invasion be so imminent as not to admit of delay until the Congress can be consulted.

## ARTICLE II

Section 1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice President, chosen for the same term, be elected in the following manner:

Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in Congress: but no senator or representative shall be appointed an elector, nor any person holding an office of trust or profit under the United States.

The electors shall meet in their respective states and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the general government, directed to the president of the Senate. The president of the Senate shall in the presence of the Senate and House of Representatives open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list, the said House shall in like manner choose the President. But in choosing the President, the votes shall be taken by states and not per capita, the representation from each state having one vote. A quorum for this purpose shall consist of a member or

members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the President by the representatives, the person having the greatest number of votes of the electors shall be the Vice President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice President.

The Congress may determine the time of choosing the electors, and the time in which they shall give their votes; but the election shall be on the same day throughout the United States.

No person except a natural born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President, and the Congress may by law provide for the case of removal, death, resignation or inability, both of the President and Vice President, declaring what officer shall then act as President, and such officer shall act accordingly until the disability be removed, or the period for choosing another President arrive.

The President shall, at stated times, receive a fixed compensation for his services, which shall neither be increased nor diminished during the period for which he shall have been elected.

Before he enter on the execution of his office, he shall take the following oath or affirmation: "I ———, do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will to the best of my judgment and power, preserve, protect and defend the Constitution of the United States."

Section 2. The President shall be Commander-in-Chief of the Army and Navy of the United States, and of the militia of the several states when called into the actual service of the United States; he may require the opinion, in writing, of the principal

officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for.

The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

Section 3. He shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient: he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them with respect to the time of adjournment, he may adjourn them to such time as he shall think proper: he shall receive ambassadors and other public ministers: he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

Section 4. The President, Vice President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of treason, bribery, or other high crimes and misdemeanors.

### ARTICLE III

Section 1. The judicial power of the United States, both in law and equity, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

Section 2. The judicial power shall extend to all cases, both in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority. To all cases affecting ambassadors, other public ministers and consuls. To all cases of admiralty and maritime jurisdiction. To controversies to which the United States shall be a party. To controversies between two or more states; between a state and citizens of another state; between citizens of different states; between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

In cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed.

Section 3. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood nor forfeiture, except during the life of the person attainted.

#### ARTICLE IV

Section 1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.



Section 2. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall on demand of the executive authority of the state from which he fled, be delivered up and removed to the state having jurisdiction of the crime.

No person legally held to service or labor in one state, escaping into another, shall in consequence of regulations subsisting therein be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

Section 3. New states may be admitted by the Congress into this Union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned as well as of the Congress.

The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States: and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

Section 4. The United States shall guarantee to every state in this Union a republican form of government, and shall protect each of them against invasion; and on application of the legislature or executive, against domestic violence.

#### ARTICLE V

The Congress, whenever two-thirds of both houses shall deem necessary, or on the application of two-thirds of the legislatures of the several states, shall propose amendments to this Constitution, which shall be valid to all intents and purposes, as part thereof, when the same shall have been ratified by three-fourths at least of the legislatures of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress: Provided that no amend-

ment which may be made prior to the year 1808 shall in any manner affect the ——— and ——— sections of the ——— article.

#### ARTICLE VI

All debts contracted and engagements entered into before the adoption of this Constitution shall be as valid against the United States under this Constitution as under the Confederation.

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding.

The senators and representatives before-mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

#### ARTICLE VII

The ratification of the conventions of nine states shall be sufficient for the establishment of this Constitution between the states so ratifying the same.

#### COMPLETING THE CONSTITUTION

[The stages of development outlined in introductions to documents printed in this chapter account in large measure for the excellence of the Constitution. They reveal, first, leadership of high quality in the initiation of plans, in the discussion of questions, and in the work of committees; second, at least one consideration, sometimes several, of every fundamental proposition before the Convention during each stage of development; third, votes of silent delegates who listened patiently and rendered sound verdicts; and fourth, correlations of agreements that

bound them into a harmonious whole. It was not a "work . . . struck off at a given time by the brain and purpose of man." It was rather an incorporation into the supreme law of the land of structures that had worked for centuries in English and American environments; of principles that had been tested and developed "for a time whereof the memory of man runneth not to the contrary"; of a spirit that adjusts it to new times and new conditions. An organic law that retains its vitality and efficacy after one hundred and fifty years of operation is a unique product of human capacity.]

#### FINAL DRAFT

We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

#### ARTICLE I

Section 1. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 2. The House of Representatives shall be composed of members chosen every second year by the people of the several states; and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those

bound to service for a term of years and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the state of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

The House of Representatives shall choose their Speaker and other officers; and shall have the sole power of impeachment.

Section 3. The Senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided, as equally as may be, into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen, by resignation or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of the state for which he shall be chosen.

The Vice President of the United States shall be president of the Senate, but shall have no vote unless they be equally divided.

The Senate shall choose their other officers, and also a president pro tempore, in the absence of the Vice President, or when he shall exercise the office of President of the United States.

The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.

Judgment, in cases of impeachment, shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit, under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law.

Section 4. The times, places, and manner of holding elections for senators and representatives shall be prescribed in each state by the legislature thereof; but the Congress may, at any time, by law, make or alter such regulations, except as to the places of choosing senators.

The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

Section 5. Each house shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each house may provide.

Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and with the concurrence of two-thirds, expel a member.

Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy, and the yeas and nays of the

members of either house, on any question, shall, at the desire of one-fifth of those present, be entered on the journal.

Neither house, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

Section 6. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to or returning from the same, and for any speech or debate in either house they shall not be questioned in any other place.

No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office.

Section 7. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments, as on other bills.

Every bill which shall have passed the House of Representatives and the Senate shall, before it become a law, be presented to the President of the United States. If he approve, he shall sign it; but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases, the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal

of each house respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return; in which case it shall not be a law.

Every order, resolution, or vote, to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment), shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

Section 8. The Congress shall have power—

To lay and collect taxes, duties, imposts, and excises; to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises, shall be uniform throughout the United States.

To borrow money on the credit of the United States.

To regulate commerce with foreign nations, and among the several states, and with the Indian tribes.

To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States.

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures.

To provide for the punishment of counterfeiting the securities and current coin of the United States.

To establish post offices and post roads.

To promote the progress of science and useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries.

To constitute tribunals inferior to the Supreme Court.

To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations.

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water.

To raise and support armies; but no appropriation of money to that use shall be for a longer term than two years.

To provide and maintain a navy.

To make rules for the government and regulation of the land and naval forces.

To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions.

To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States—reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress.

To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square), as may, by cession of particular states, and the acceptance of Congress, become the seat of government of the United States, and to exercise like authority over all places purchased, by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings; and

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

Section 9. The migration or importation of such persons as any of the states, now existing, shall think proper to admit, shall not be prohibited by the Congress prior to the year 1808, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it.

No bill of attainder, or ex post facto law, shall be passed.

No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.



No tax or duty shall be laid on articles exported from any state. No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another: nor shall vessels bound to or from one state be obliged to enter, clear, or pay duties in another.

No money shall be drawn from the treasury but in consequence of appropriations made by law: and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States: and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state.

Section 10. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

No state shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws: and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States, and all such laws shall be subject to the revision and control of the Congress. No state shall, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power; or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

## ARTICLE II

Section 1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice President, chosen for the same term, be elected as follows:

Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the Congress; but no senator or representative, or person holding any office of trust or profit under the United States, shall be appointed an elector.

The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the Senate. The president of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose, by ballot, one of them for President; and if no person have a majority, then, from the five highest on the list, the said House shall, in like manner, choose the President. But, in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice President. But if there should remain two or more who have equal votes, the Senate shall choose from them, by ballot, the Vice President.

The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

No person, except a natural born citizen, or a citizen of the United States at the time of the adoption of this Constitution,

shall be eligible to the office of President, neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President, and the Congress may, by law, provide for the case of removal, death, resignation, or inability, both of the President and Vice President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

The President shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

Before he enters on the execution of his office, he shall take the following oath or affirmation:

"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will to the best of my ability, preserve, protect, and defend, the Constitution of the United States."

Section 2. The President shall be Commander-in-Chief of the Army and Navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments upon any subject relating to the duties of their respective offices; and he shall have power to grant reprieves and pardons for offenses against the United States except in cases of impeachment.

He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the senators present concur; and he shall nominate, and, by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments

are not herein otherwise provided for, and which shall be established by law. But the Congress may, by law, vest the appointment of such inferior officers as they think proper in the President alone, in the courts of law, or in the heads of departments.

The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

Section 3. He shall, from time to time, give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed; and shall commission all the officers of the United States.

Section 4. The President, Vice President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

### ARTICLE III

Section 1. The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may, from time to time, ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior; and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.

Section 2. The judicial power shall extend to all cases in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states; between a

state and citizens of another state; between citizens of different states; between citizens of the same state, claiming lands under grants of different states; and between a state, or the citizens thereof, and foreign states, citizens, or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before-mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations, as the Congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed.

Section 3. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The Congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

#### ARTICLE IV

Section 1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may, by general laws, prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

Section 2. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from

which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor; but shall be delivered up, on claim of the party to whom such service or labor may be due.

Section 3. New states may be admitted by the Congress into this Union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states; without the consent of the legislatures of the states concerned, as well as of the Congress.

The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States: and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

Section 4. The United States shall guarantee to every state in this Union a republican form of government, and shall protect each of them against invasion; and, on application of the legislature or the executive (when the legislature cannot be convened), against domestic violence.

#### ARTICLE V

The Congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this Constitution; or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided that no amendment which may be made prior to the year 1808 shall in any manner affect the first and fourth clauses in the ninth section of the

first article; and that no state, without its consent, shall be deprived of its equal suffrage in the Senate.

#### ARTICLE VI

All debts contracted, and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution as under the Confederation.

This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby; anything in the Constitution or laws of any state to the contrary notwithstanding.

The senators and representatives before-mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States, and of the several states, shall be bound by oath, or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

#### ARTICLE VII

The ratification of the conventions of nine states shall be sufficient for the establishment of this Constitution between the states so ratifying the same.

CHAPTER 4  
RATIFICATION OF THE COMPLETED  
CONSTITUTION

DELIBERATIONS ON RATIFICATION

**Preliminaries in Committee of the Whole.** Resolved, that the amendments which shall be offered to the Confederation by the Convention, ought, at a proper time or times, after the approbation of Congress, to be submitted to an assembly or assemblies of representatives, recommended by the several legislatures, to be expressly chosen by the people, to consider and decide thereon. Proposition in Virginia Plan. *May 29*

Sherman: Thought such a popular ratification unnecessary, the Articles of Confederation providing for changes and alterations with the assent of Congress and ratification of state legislatures. *June 5*

Madison: Thought this provision essential. The Articles of Confederation themselves were defective in this respect, resting in many of the states on the legislative sanction only. Hence in conflicts between acts of the states and of Congress, especially where the former are of posterior date and the decision is to be made by state tribunals, an uncertainty must necessarily prevail, or rather perhaps a certain decision in favor of the state authority. He suggested also that as far as the Articles of Union were to be considered as a treaty only of a particular sort, among the governments of independent states, the doctrine might be set up that a breach of any one article, by any of the parties, absolved the other parties from



the whole obligation. For these reasons as well as others, he thought it indispensable that the new Constitution should be ratified in the most unexceptionable form, and by the supreme authority of the people themselves.

Gerry: Observed that in the eastern states, the Confederation had been sanctioned by the people themselves. He seemed afraid of referring the new system to them. The people in that quarter have at this time the wildest ideas of government in the world. They were for abolishing the senate in Massachusetts and giving all the other powers of government to the other branch of the legislature.

King: Supposed that the last Article of the Confederation rendered the legislature competent to the ratification. The people of the southern states, where the federal Articles had been ratified by the legislatures only, had since *impliedly* given their sanction to it. He thought notwithstanding that there might be policy in varying the mode. A convention being a single house, the adoption may more easily be carried through it than through the legislatures where there are several branches. The legislatures also being to lose power, will be most likely to raise objections. The people having already parted with the necessary powers, it is immaterial to them by which government they are possessed, provided they be well employed.

Wilson: Took this occasion to lead the committee by a train of observations to the idea of not suffering a disposition in the plurality of states to confederate anew on better principles, to be defeated by the inconsiderate or selfish opposition of a few states. He hoped the provision for ratifying would be put on such a footing as to admit of such a partial union, with a door open for the accession of the rest.

C. Pinckney: Hoped that in case the experiment should not unanimously take place, nine states might be authorized to unite under the same government.

Further consideration of the fifteenth resolution was postponed,  
*nem. con.*

Without further discussion, the fifteenth resolution was approved: Yeas 6 (Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia); nays 3 (Connecticut, New York, New Jersey); divided 2 (Delaware, Maryland). *June 12*

**Fundamentals in Convention.** Resolved, that the amendments which shall be offered to the Confederation by the Convention ought, at a proper time or times after the approbation of Congress, to be submitted to an assembly or assemblies of representatives, recommended by the several legislatures, to be expressly chosen by the people to consider and decide thereon. Nineteenth resolution, Committee of the Whole. *June 19*

Ellsworth and Paterson: Moved that the Constitution framed by this Convention be referred to the legislatures of the states for ratification. *July 23*

Mason: Considered a reference of the plan to the authority of the people as one of the most important and essential of the resolutions. The legislatures have no power to ratify it. They are the mere creatures of the state constitutions, and can not be greater than their creators. And he knew of no power in any of the constitutions, he knew there was no power in some of them, that could be competent to this object. Whither then must we resort? To the people with whom all power remains that has not been given up in the constitutions derived from them. It was of great moment, he observed, that this doctrine should be cherished as the basis of free government. Another strong reason was that admitting the legislatures to have a competent authority, it would be wrong to refer the plan to them, because succeeding legislatures having equal authority could undo the acts of their predecessors; and the national government would stand in each state on the weak and tottering foundation of an act of assembly. There was a remaining consideration of some weight. In some of the states, the governments were not derived from the clear and undisputed authority of the people. This was the case in Virginia. Some of the best and wisest citizens considered the constitu-

tion as established by an assumed authority. A national constitution derived from such a source would be exposed to the severest criticisms.

Randolph: One idea has pervaded all our proceedings, to wit, that opposition as well from the states as from individuals will be made to the system to be proposed. Will it not then be highly imprudent to furnish any unnecessary pretext by the mode of ratifying it? Added to other objections against a ratification by legislative authority only, it may be remarked that there have been instances in which the authority of the common law has been set up in particular states against that of the Confederation which has had no higher sanction than legislative ratification.—Whose opposition will be most likely to be excited against the system? That of local demagogues who will be degraded by it from the importance they now hold. These will spare no efforts to impede that progress in the popular mind which will be necessary to the adoption of the plan, and which every member will find to have taken place in his own, if he will compare his present opinions with those brought with him into the Convention. It is of great importance therefore that the consideration of this subject should be transferred from the legislatures where this class of men have their full influence to a field in which their efforts can be less mischievous. It is moreover worthy of consideration that some of the states are averse to any change in their constitution, and will not take the requisite steps, unless expressly called upon to refer the question to the people.

Gerry: The arguments of Col. Mason and Mr. Randolph prove too much. They prove an unconstitutionality in the present federal system, even in some of the state governments. Inferences drawn from such a source must be inadmissible. Both the state governments and the federal government have been too long acquiesced in to be now shaken. He considered the Confederation to be paramount to any state constitution. The last article of it authorizing alterations must consequently be so as well as the others, and every thing done in pursuance of the article must have the same high authority with

the article. Great confusion, he was confident, would result from a recurrence to the people. They would never agree on any thing. He could not see any ground to suppose that the people will do what their rulers will not. The rulers will either conform to or influence the sense of the people.

Gorham: Was against referring the plan to the legislatures. (1) Men chosen by the people for the particular purpose will discuss the subject more candidly than members of the legislature who are to lose the power which is to be given up to the general government. (2) Some of the legislatures are composed of several branches. It will consequently be more difficult in these cases to get the plan through the legislatures than through a convention. (3) In the states, many of the ablest men are excluded from the legislatures but may be elected into a convention. Among these may be ranked many of the clergy who are generally friends to good government. Their services were found to be valuable in the formation and establishment of the constitution of Massachusetts. (4) The legislatures will be interrupted with a variety of little business, by artfully pressing which, designing men will find means to delay from year to year, if not to frustrate altogether, the national system. (5) If the last Article of the Confederation is to be pursued, the unanimous concurrence of the states will be necessary. But will any one say that all the states are to suffer themselves to be ruined, if Rhode Island should persist in her opposition to general measures? Some other states might also tread in her steps. The present advantage which New York seems to be so much attached to, of taxing her neighbors by the regulation of her trade, makes it very probable that she will be of the number. It would therefore deserve serious consideration whether provision ought not to be made for giving effect to the system without waiting for the unanimous concurrence of the states.

Ellsworth: If there be any legislatures who should find themselves incompetent to the ratification, he should be content to let them advise with their constituents and pursue such a mode as would be competent. He thought more was to be ex-

pected from the legislatures than from the people. The prevailing wish of the people in the eastern states is to get rid of the public debt; and the idea of strengthening the national government carries with it that of strengthening the public debt. It was said by Col. Mason in the first place that the legislatures have no authority in this case, and in the second that their successors having equal authority could rescind their acts. As to the second point, he could not admit it to be well founded. An act to which the states by their legislatures make themselves parties becomes a compact from which no one of the parties can recede of itself. As to the first point, he observed that a new set of ideas seemed to have crept in since the Articles of Confederation were established. Conventions of the people, or with power derived expressly from the people, were not then thought of. The legislatures were considered as competent. Their ratification has been acquiesced in without complaint. To whom have Congress applied on subsequent occasions for further powers? To the legislatures; not to the people. The fact is that we exist at present, and we need not enquire how, as a federal society, united by a charter one article of which is that alterations therein may be made by the legislative authority of the states. It has been said that if the Confederation is to be observed, the states must *unanimously* concur in the proposed innovations. He would answer that if such were the urgency and necessity of our situation as to warrant a new compact among a part of the states, founded on the consent of the people; the same pleas would be equally valid in favor of a partial compact, founded on the consent of the legislatures.

Williamson: Thought the resolution (the nineteenth) so expressed as that it might be submitted either to the legislatures or to conventions recommended by the legislatures. He observed that some legislatures were evidently unauthorized to ratify the system. He thought too that conventions were to be preferred as more likely to be composed of the ablest men in the states.

G. Morris: Considered the inference of Mr. Ellsworth from the

plea of necessity as applied to the establishment of a new system on the consent of the people of a part of the states, in favor of a like establishment on the consent of a part of the legislatures as a *non sequitur*. If the Confederation is to be pursued, no alteration can be made without the unanimous consent of the legislatures: legislative alterations not conformable to the federal compact would clearly not be valid. The judges would consider them as null and void. Whereas in case of an appeal to the people of the United States, the supreme authority, the federal compact may be altered by a *majority of them*, in like manner as the constitution of a particular state may be altered by a majority of the people of the state. The amendment moved by Mr. Ellsworth erroneously supposes that we are proceeding on the basis of the Confederation. This Convention is unknown to the Confederation.

King: Thought with Mr. Ellsworth that the legislatures had a competent authority, the acquiescence of the people of America in the Confederation, being equivalent to a formal ratification by the people. He thought with Mr. Ellsworth also that the plea of necessity was as valid in the one case as the other. At the same time he preferred a reference to the authority of the people expressly delegated to conventions as the most certain means of obviating all disputes and doubts concerning the legitimacy of the new Constitution, as well as the most likely means of drawing forth the best men in the states to decide on it. He remarked that among other objections made in the state of New York to granting powers to Congress, one had been that such powers as would operate within the states could not be reconciled to the Constitution; and therefore were not grantable by the legislative authority. He considered it as of some consequence also to get rid of the scruples which some members of the state legislatures might derive from their oaths to support and maintain the existing constitutions.

Madison: Thought it clear that the legislatures were incompetent to the proposed changes. These changes would make es-

sential inroads on the state constitutions, and it would be a novel and dangerous doctrine that a legislature could change the constitution under which it held its existence. There might indeed be some constitutions within the Union which had given a power to the legislature to concur in alterations of the federal compact. But there were certainly some which had not; and in the case of these, a ratification must of necessity be obtained from the people. He considered the difference between a system founded on the legislatures only, and one founded on the people, to be the true difference between a *league* or *treaty*, and a *constitution*. The former in point of *moral obligation* might be as inviolable as the latter. In point of *political operation* there were two important distinctions in favor of the latter. First, a law violating a treaty ratified by a pre-existing law might be respected by the judges as a law, though an unwise or perfidious one. A law violating a constitution established by the people themselves would be considered by the judges as null and void. Secondly, the doctrine laid down by the law of nations in the case of treaties is that a breach of any one article by any of the parties, frees the other parties from their engagements. In the case of a union of people under one constitution, the nature of the pact has always been understood to exclude such an interpretation. Comparing the two modes in point of expediency, he thought all the considerations which recommended this Convention in preference to Congress for proposing the reform were in favor of state conventions in preference to the legislatures for examining and adopting it.

On the question on Ellsworth's motion to refer the plan to the legislatures of the states: Yeas 3 (Connecticut, Delaware, Maryland); nays 7 (New Hampshire, Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia).

G. Morris: Moved that the reference of the plan be made to one general convention, chosen and authorized by the people to consider, *amend*, and establish the same. Not seconded.

On the question for agreeing to the nineteenth resolution, touching the mode of ratification as reported from the Com-

mittee of the Whole, viz., to refer the Constitution, after the approbation of Congress, to assemblies chosen by the people: Yeas 9 (New Hampshire, Massachusetts, Connecticut, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia); nays 1 (Delaware).

**Agreement Referred to Committee of Detail.** Resolved, that the amendments which shall be offered to the Confederation by the Convention ought, at a proper time or times, after the approbation of Congress, to be submitted to an assembly or assemblies of representatives, recommended by the several legislatures, to be expressly chosen by the people to consider and decide thereon. Twenty-first resolution on fundamentals. *July 26*

**Details in Convention.** The ratification of the conventions of ——— states shall be sufficient for organizing this Constitution. Article XXI, Committee of Detail. *Aug. 6*

This Constitution shall be laid before the United States in Congress assembled, for their approbation; and it is the opinion of this Convention that it should be afterwards submitted to a convention chosen in each state under the recommendation of its legislature, in order to receive the ratification of such convention. Article XXII, Committee of Detail.

To introduce this government, it is the opinion of this Convention that each assenting Convention should notify its assent and ratification to the United States in Congress assembled; that Congress, after receiving the assent and ratification of the Conventions of ——— states, should appoint and publish a day, as early as may be, and appoint a place, for commencing proceedings under this Constitution; that after such publication, the legislatures of the several states should elect members of the Senate and direct the election of members of the House of Representatives; and that the members of the legislature should meet at the time and place assigned by Congress, and should, as soon as may be after their meeting, choose the President of the United States, and proceed to execute this Constitution. Article XXIII, Committee of Detail.



- Aug. 30 Wilson: Proposed to fill the blank with "seven," that being a majority of the whole number and sufficient for the commencement of the plan.
- G. Morris: Thought the blank ought to be filled in a two-fold way, so as to provide for the event of the ratifying states being contiguous which would render a smaller number sufficient, and the event of their being dispersed, which would require a greater number for the introduction of the government.
- Sherman: Observed that the states being now confederated by articles which require unanimity in changes, he thought the ratification in this case of ten states at least ought to be made necessary.
- Randolph: Was for filling the blank with "nine," that being a respectable majority of the whole, and being a number made familiar by the constitution of the existing Congress.
- Wilson: Mentioned "eight" as preferable.
- Dickinson: Asked whether the concurrence of Congress is to be essential to the establishment of the system, whether the refusing states in the Confederacy could be deserted—and whether Congress could concur in contravening the system under which they acted?
- Madison: Remarked that if the blank should be filled with "seven," "eight," or "nine"—the Constitution as it stands might be put in force over the whole body of the people, though less than a majority of them should ratify it.
- Wilson: As the Constitution stands, the states only which ratify can be bound. We must, he said, in this case go to the original powers of society. The house on fire must be extinguished, without a scrupulous regard to ordinary rights.
- Butler: Was in favor of "nine." He revolted at the idea that one or two states should restrain the rest from consulting their safety.
- Carroll: Moved to fill the blank with "the thirteen," unanimity being necessary to dissolve the existing Confederacy which had been unanimously established.
- King: Thought this amendment necessary, otherwise as the

Constitution now stands, it will operate on the whole though ratified by a part only.

King: Moved to add to the end of Article XXI the words "between the said states" so as to confine the operation of the government to the states ratifying it. *Aug. 31*

On the question: Yeas 9 (New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia); nays 1 (Maryland); Delaware absent.

Madison: Proposed to fill the blank in the article with "any seven or more states entitled to thirty-three members at least in the House of Representatives according to the allotment made in the third section of Article IV." This he said would require the concurrence of a majority both of the states and the people.

Sherman: Doubted the propriety of authorizing less than all the states to execute the Constitution, considering the nature of the existing Confederation. Perhaps all the states may concur, and on that supposition it is needless to hold out a breach of faith.

G. Morris: Moved to strike out "conventions of the" after "ratifications," leaving the states to pursue their own modes of ratification.

Carroll: Mentioned the mode of altering the constitution of Maryland pointed out therein, and that no other mode could be pursued in that state.

King: Thought that striking out "conventions" as the requisite mode was equivalent to giving up the business altogether. Conventions alone, which will avoid all the obstacles from the complicated formation of the legislatures, will succeed, and if not positively required by the plan, its enemies will oppose that mode.

G. Morris: Said he meant to facilitate the adoption of the plan by leaving the modes approved by the several state constitutions to be followed.

Madison: Considered it best to require conventions; among

other reasons, for this, that the powers given to the general government, being taken from the state governments, the legislatures would be more disinclined than conventions composed in part at least of other men; and if disinclined, they could devise modes apparently promoting, but really thwarting the ratification. The difficulty in Maryland was no greater than in other states, where no mode of change was pointed out by the constitution, and all officers were under oath to support it. The people were in fact the fountain of all power, and by resorting to them, all difficulties were got over. They could alter constitutions as they pleased. It was a principle in the bills of rights that first principles might be resorted to.

McHenry: Said that the officers of government in Maryland were under oath to support the mode of alteration prescribed by the constitution.

Gorham and C. Pinckney: Urged the expediency of "conventions" for reasons formerly urged on a discussion of this question.

L. Martin: Insisted on a reference to the state legislatures. He urged the danger of commotions from a resort to the people and to first principles in which the governments might be on one side and the people on the other. He was apprehensive of no such consequences, however, in Maryland, whether the legislature or the people should be appealed to. Both of them would be generally against the constitution. He repeated also the peculiarity in the Maryland constitution.

King: Observed that the constitution of Massachusetts was made unalterable till the year 1790, yet this was no difficulty with him. The state must have contemplated a recurrence to first principles before they sent deputies to this Convention.

On G. Morris's motion to strike out "conventions of the," it was negatived: Yeas 4 (Connecticut, Pennsylvania, Maryland, Georgia); nays 6 (New Hampshire, Massachusetts, New Jersey, Delaware, Virginia, South Carolina).

On the question for filling the blank in Article XXI with "thirteen," moved by Carroll and L. Martin: All the states were no, except Maryland.

Sherman and Dayton: Moved to fill the blank with "ten."

Wilson: Supported the motion of Mr. Madison, requiring a majority both of the people and of states.

Clymer: Was also in favor of it.

Mason: Was for preserving ideas familiar to the people. Nine states had been required in all great cases under the Confederation and that number was on that account preferable.

On the question for "ten": Yeas 4 (Connecticut, New Jersey, Maryland, Georgia); nays 7 (New Hampshire, Massachusetts, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina).

On question for "nine": Yeas 8 (New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Georgia); nays 3 (Virginia, North Carolina, South Carolina).

Article XXI as amended was then agreed to by all the states, Maryland excepted and Mr. Jenifer being yea.

Article XXII was then taken up, to wit: This Constitution shall be laid before the United States in Congress assembled for their approbation; and it is the opinion of this Convention that it should be afterwards submitted to a convention chosen in each state under the recommendation of its legislature, in order to receive the ratification of such convention.

G. Morris and C. Pinckney moved to strike out the words "for their approbation."

On this question: Yeas 8 (New Hampshire, Connecticut, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina); nays 3 (Massachusetts, Maryland, Georgia).

G. Morris and C. Pinckney: Then moved to amend the article so as to read: "This Constitution shall be laid before the United States in Congress assembled; and it is the opinion of this Convention that it should afterwards be submitted to a convention chosen in each state in order to receive the ratification of such convention: to which end the several legislatures ought to provide for the calling conventions within their respective states as speedily as circumstances will permit."

G. Morris: Said his object was to impress in stronger terms the necessity of calling conventions in order to prevent enemies to the plan from giving it the go by. When it first appears, with the sanction of this Convention, the people will be favorable to it. By degrees the state officers and those interested in the state governments will intrigue and turn the popular current against it.

L. Martin: Believed Mr. Morris to be right, that after a while the people would be against it, but for a different reason from that alleged. He believed they would not ratify it unless hurried into it by surprise.

Gerry: Enlarged on the idea of Mr. L. Martin in which he concurred, represented the system as full of vices, and dwelt on the impropriety of destroying the existing Confederation, without the unanimous consent of the parties to it.

On the question of G. Morris's and C. Pinckney's motion: Yeas 4 (New Hampshire, Massachusetts, Pennsylvania, Delaware); nays 7 (Connecticut, New Jersey, Maryland, Virginia, North Carolina, South Carolina, Georgia).

Gerry: Moved to postpone Article XXII.

Mason: Seconded the motion, declaring that he would sooner chop off his right hand than put it to the Constitution as it now stands. He wished to see some points not yet decided brought to a decision before being compelled to give a final opinion on this article. Should these points be improperly settled, his wish would then be to bring the whole subject before another general convention.

G. Morris: Was ready for a postponement. He had long wished for another convention that will have the firmness to provide a vigorous government, which we are afraid to do.

Randolph: Stated his idea to be, in case the final form of the Constitution should not permit him to accede to it, that the state conventions should be at liberty to propose amendments to be submitted to another general convention which may reject or incorporate them, as may be judged proper.

On the question for postponing: Yeas 3 (New Jersey, Maryland, North Carolina); nays 8 (New Hampshire, Massachusetts,

Connecticut, Pennsylvania, Delaware, Virginia, South Carolina, Georgia).

On the question on Article XXII: Yeas 10 (New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia); nays 1 (Maryland).

Article XXIII, being taken up, as far as the words "assigned by Congress," inclusive, was agreed to, *nem. con.*, the blank having been first filled with the word "nine," as of course.

On the motion for postponing the residue of the clause, "concerning the choice of the President, etc.": Yeas 4 (Massachusetts, Delaware, Virginia, North Carolina); nays 7 (New Hampshire, Connecticut, New Jersey, Pennsylvania, Maryland, South Carolina, Georgia).

G. Morris: Then moved to strike out the words, "choose the President of the United States, and"; this point, of choosing the President, not being yet finally determined.

On this question: Yeas 9 (Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia); nays 1 (New Hampshire); divided 1 (Maryland).

Article XXIII, as amended, was then agreed to, *nem. con.*

Gerry: Moved to reconsider Articles XXI and XXII, from the latter of which "for the approbation of Congress" had been struck out. He objected to proceeding to change the government without the approbation of Congress, as being improper and giving just umbrage to that body. He repeated his objections also to an annulment of the Confederation with so little scruple or formality. Sept. 10

Hamilton: Concurred with Mr. Gerry as to the indecorum of not requiring the approbation of Congress. He considered this as a necessary ingredient in the transaction. He thought it wrong also to allow nine states as provided by Article XXI to institute a new government on the ruins of the existing one. He would propose as a better modification of the two articles (XXI and XXII) that the plan should be sent to Congress in order that the same, if approved by them, may

be communicated to the state legislatures, to the end that they may refer it to state conventions; each legislature declaring that if the convention of the state should think the plan ought to take effect among nine ratifying states, the same should take effect accordingly.

Gorham: Some states will say that nine states shall be sufficient to establish the plan, others will require unanimity for the purpose. And the different and conditional ratifications will defeat the plan altogether.

Hamilton: No convention convinced of the necessity of the plan will refuse to give it effect on the adoption by nine states. He thought this mode less exceptionable than the one proposed in the article, while it would attain the same end.

Fitzsimons: Remarked that the words "for their approbation" had been struck out in order to save Congress from the necessity of an act inconsistent with the Articles of Confederation under which they held their authority.

Randolph: Declared if no change should be made in this part of the plan, he should be obliged to dissent from the whole of it. He had from the beginning, he said, been convinced that radical changes in the system of the Union were necessary. Under this conviction he had brought forward a set of republican propositions as the basis and outline of a reform. These republican propositions had, however, much to his regret, been widely and in his opinion irreconcilably departed from. In this state of things it was his idea and he accordingly meant to propose that the state conventions should be at liberty to offer amendments to the plan; and that these should be submitted to a second general convention, with full power to settle the Constitution finally. He did not expect to succeed in this proposition, but the discharge of his duty in making the attempt would give quiet to his own mind.

Wilson: Was against a reconsideration for any of the purposes which had been mentioned.

King: Thought it would be more respectful to Congress to submit the plan generally to them, than in such a form as

expressly and necessarily to require their approbation or disapprobation. The assent of nine states be considered as sufficient; and that it was more proper to make this a part of the Constitution itself than to provide for it by a supplemental or distinct recommendation.

Gerry: Urged the indecency and pernicious tendency of dissolving in so slight a manner, the solemn obligations of the Articles of Confederation. If nine out of thirteen can dissolve the compact, six out of nine will be just as able to dissolve the new one hereafter.

Sherman: Was in favor of Mr. King's idea of submitting the plan generally to Congress. He thought nine states ought to be made sufficient: but that it would be better to make it a separate act and in some such form as that intimated by Col. Hamilton than to make it a particular article of the Constitution.

On the question for reconsidering the two articles, XXI and XXII: Yeas 7 (Connecticut, New Jersey, Delaware, Maryland, Virginia, North Carolina, Georgia); nays 3 (Massachusetts, Pennsylvania, South Carolina); divided 1 (New Hampshire).

Hamilton: Then moved to postpone Article XXI in order to take up the following, containing the ideas he had above expressed—viz.: "Resolved, that the foregoing plan of a Constitution be transmitted to the United States in Congress assembled, in order that if the same shall be agreed to by them, it may be communicated to the legislatures of the several states, to the end that they may provide for its final ratification by referring the same to the consideration of a convention of deputies in each state to be chosen by the people thereof, and that it be recommended to the said legislatures in their respective acts for organizing such convention to declare that if the said convention shall approve of the said Constitution, such approbation shall be binding and conclusive upon the state, and further that if the said convention should be of opinion that the same upon the assent of any nine states thereto, ought to take effect between the states so



assenting, such opinion shall thereupon be also binding upon such state, and the said Constitution shall take effect between the states assenting thereto."

Gerry: Seconded the motion.

Wilson: This motion being seconded, it is necessary now to speak freely. He expressed in strong terms his disapprobation of the expedient proposed, particularly the suspending the plan of the convention on the approbation of Congress. He declared it to be worse than folly to rely on the concurrence of the Rhode Island members of Congress in the plan. Maryland has voted on this floor for requiring the unanimous assent of the thirteen states to the proposed change in the federal system. New York has not been represented for a long time past in the convention. Many individual deputies from other states have spoken much against the plan. Under these circumstances, can it be safe to make the assent of Congress necessary? After spending four or five months in the laborious and arduous task of forming a government for our country, we are ourselves at the close throwing insuperable obstacles in the way of its success.

Clymer: Thought that the mode proposed by Mr. Hamilton would fetter and embarrass Congress as much as the original one, since it equally involved a breach of the Articles of Confederation.

King: Concurred with Mr. Clymer. If Congress can accede to one mode, they can to the other. If the approbation of Congress be made necessary, and they should not approve, the state legislatures will not propose the plan to conventions; or if the states themselves are to provide that nine states shall suffice to establish the system, that provision will be omitted, every thing will go into confusion, and all our labor be lost.

Rutledge: Viewed the matter in the same light with Mr. King. On the question to postpone, in order to take up Hamilton's motion: Yeas 1 (Connecticut); nays 10 (New Hampshire, Massachusetts, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia).

A question being then taken on the Article XXI, it was agreed to unanimously.

Hamilton: Withdrew the remainder of the motion to postpone Article XXII, observing that his purpose was defeated by the vote just given.

Williamson and Gerry: Moved to reinstate the words "for the approbation of Congress" in Article XXII, which was disagreed to, *nem. con.*

Randolph: Took this opportunity to state his objections to the system. They turned on the Senate's being made the court of impeachment for trying the executive—on the necessity of three-fourths instead of two-thirds of each house to overrule the negative of the President—on the smallness of the number of the representative branch—on the want of limitation to a standing army—on the general clause concerning necessary and proper laws—on the want of some particular restraint on navigation acts—on the power to lay duties on exports—on the authority of the general legislature to interpose on the application of the executives of the states—on the want of a more definite boundary between the general and state legislatures—and between the general and state judiciaries—on the unqualified power of the President to pardon treasons—on the want of some limit to the power of the legislature in regulating their own compensations. With these difficulties in his mind, what course, he asked, was he to pursue? Was he to promote the establishment of a plan which he verily believed would end in tyranny? He was unwilling, he said, to impede the wishes and judgment of the Convention, but he must keep himself free, in case he should be honored with a seat in the convention of his state, to act according to the dictates of his judgment. The only mode in which his embarrassments could be removed was that of submitting the plan to Congress to go from them to the state legislatures, and from these to state conventions having power to adopt, reject, or amend; the process to close with another general convention with full power to adopt or reject the al-

terations proposed by the state conventions, and to establish finally the government. He accordingly proposed a resolution to this effect.

Franklin: Seconded the motion.

Mason: Urged and obtained that the motion should lie on the table for a day or two to see what steps might be taken with regard to the parts of the system objected to by Mr. Randolph.

C. Pinckney: Moved "that it be an instruction to the Committee for revising the style and arrangement of the articles agreed on, to prepare an address to the people, to accompany the present Constitution, and to be laid with the same before the United States in Congress."

The motion itself was referred to the Committee, *nem. con.*

*Sept. 12*    **Conclusions in Convention.** The ratification of the conventions of nine states shall be sufficient for the establishment of this Constitution between the states so ratifying the same. Article VII. Report of the Committee on Style and Arrangement.

*Sept. 13*    Johnson: Made a further report from the Committee on Style and Arrangement of the following resolutions to be substituted for Articles XXII and XXIII:

Resolved, that the preceding Constitution be laid before the United States in Congress assembled; and that it is the opinion of this Convention that it should afterwards be submitted to a convention of delegates chosen in each state by the people thereof, under the recommendation of its legislature, for their assent and ratification; and that each convention assenting to and ratifying the same, should give notice thereof to the United States in Congress assembled.

Resolved, that it is the opinion of this Convention that as soon as the conventions of nine states shall have ratified this Constitution, the United States in Congress assembled should fix a day on which electors should be appointed by the states which shall have ratified the same; and a day on which the electors should assemble to vote for the President; and the time and place for commencing proceedings under this Con-

stitution: That after such publication the electors should be appointed, and the senators and representatives elected: That the electors should meet on the day fixed for the election of the President, and should transmit their votes, certified, signed, sealed and directed, as the Constitution requires, to the Secretary of the United States in Congress assembled: That the senators and representatives should convene at the time and place assigned: that the senators should appoint a president for the sole purpose of receiving, opening and counting the votes for President, and that after he shall be chosen, the Congress, together with the President, should, without delay, proceed to execute this Constitution.

Randolph: Animadverting on the indefinite and dangerous power given by the Constitution to Congress, expressing the pain he felt at differing from the body of the Convention on the close of the great and awful subject of their labours, and anxiously wishing for some accommodating expedient which would relieve him from his embarrassments, made a motion importing, "that amendments to the plan might be offered by the state conventions, which should be submitted to, and finally decided on by, another general convention." Should this proposition be disregarded, it would, he said, be impossible for him to put his name to the instrument. Whether he should oppose it afterwards, he would not then decide; but he would not deprive himself of the freedom to do so in his own state, if that course should be prescribed by his final judgment. *Sept. 15*

Mason: Seconded and followed Mr. Randolph in animadversions on the dangerous power and structure of the government, concluding that it would end either in monarchy or a tyrannical aristocracy; which, he was in doubt, but one or other, he was sure. This Constitution had been formed without the knowledge or idea of the people. A second convention will know more of the sense of the people, and be able to provide a system more consonant to it. It was improper to say to the people, take this or nothing. As the Constitution now stands, he could neither give it his support or vote in.

Virginia; and he could not sign here what he could not support there. With the expedient of another convention, as proposed, he could sign.

C. Pinckney: These declarations from members so respectable, at the close of this important scene, give a peculiar solemnity to the present moment. He descanted on the consequences of calling forth the deliberations and amendments of the different states, on the subject of government at large. Nothing but confusion and contrariety will spring from the experiment. The states will never agree in their plans, and the deputies to a second convention, coming together under the discordant impressions of their constituents, will never agree. Conventions are serious things, and ought not to be repeated. He was not without objections as well as others, to the plan. He objected to the contemptible weakness and dependence of the executive. He objected to the power of a majority, only, of Congress, over commerce. But apprehending the danger of a general confusion, and an ultimate decision by the sword, he should give the plan his support.

Gerry: Stated the objections which determined him to withhold his name from the Constitution: (1) the duration and re-eligibility of the Senate; (2) the power of the House of Representatives to conceal their journals; (3) the power of Congress over the places of election; (4) the unlimited power of Congress over their own compensation; (5) that Massachusetts has not a due share of representatives allotted to her; (6) that three-fifths of the blacks are to be represented, as if they were freemen; (7) that under the power over commerce, monopolies may be established; (8) the Vice President being made head of the Senate. He could, however, he said, get over all these, if the rights of the citizens were not rendered insecure—first, by the general power of the legislature to make what laws they may please to call “necessary and proper”; secondly, to raise armies and money without limit; thirdly, to establish a tribunal without juries, which will be a star chamber as to civil cases. Under such a view of the Constitution the

best that could be done, he conceived, was to provide for a second general convention.

On the question on the proposition of Randolph, all the states answered no.

Article VII, as recommended by the Committee on Style and Arrangement, was included in the completed Constitution unchanged.

*Sept. 17*

#### REVIEW OF DELIBERATIONS ON RATIFICATION

[Insertion by Compiler]

The ratification problem was approached by the delegates from Virginia in the preparation of their famous plan, by the Committee of the Whole in the adoption of their resolution 19, and by the Convention in referring their twenty-first resolution to the Committee of Detail, as one involving amendment of the Confederation. This attitude was completely changed in the report of the Committee of Detail. Article XXII of that report discards the word "amendment," using instead the significant expression "this Constitution," which means the new organic law drafted by the Committee. This conception of the problem ran through all subsequent discussions, which culminated in the terse solution embodied in Article VII of the completed Constitution. Randolph, in his argument on July 23, called attention to changes in the minds of delegates resulting from deliberations up to that date. Nothing in the whole course of proceedings at Philadelphia testifies more convincingly to the truth of this observation than the development of the Convention's final solution of the problem of ratification.

Throughout the stages of preliminaries and of fundamentals, propositions before the Convention related to the method of ratification, although discussion took a much wider range. The debates repeated the same differences about the authority of the Convention to depart from the existing Union that reappear whenever a proposition under consideration has this result. From the viewpoint of legalists, "the constitution was wholly

unconstitutional”<sup>1</sup> without the ratification prescribed by the Articles. From the viewpoint of nationalists, the Constitution was a mere scrap of paper without the approval of the people. Constituent legislation in the United States must express the will of the sovereign if it is to minister to the needs of an “indestructible Union composed of indestructible states.”

Noteworthy arguments for ratification by state conventions popularly chosen were these: (1) The Union resulting from approval by state legislatures would be a league, and the Constitution a treaty, with all of the defects of such political contrivances, among which are the equality of succeeding legislatures and their power to repeal previous acts. (2) The doctrine of *delegatus non potest delegare*, firmly established in American constitutional law, forbids the delegation of power to the Union by state legislatures. (3) The approval of the Constitution by state legislatures increased the likelihood of rejection, because legislators would be influenced by the loss of power they would suffer thereby, and might utilize the complexities of bicameral legislation to prevent approval. (4) A convention elected in each state to act for the people on the ratification of the Constitution would attract abler men than the average legislator, whose leadership would be untainted by the selfishness of the demagogues. (5) The supreme law of the land, determining the organization and powers of government, should express the will of the ultimate authority.

The reader must have noted with interest other methods of ratification proposed while this question was before the Convention. Gouverneur Morris, on July 23, moved that a *general* convention elected by the people be empowered to consider, *amend*, and establish the Constitution. This remarkable proposition, although it came from one of the most constructive delegates in that body, received no second. It ignored the sovereignty of states in the Confederation, and the organic relationship of states and the Union in the new system already far enough advanced to show its outstanding features. On August 31 he went to the other extreme by proposing that the method

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<sup>1</sup> Hastings Lyon, *The Constitution and the Men Who Made It*.

of ratification be left to the states; this proposal was defeated by a vote of 4 yeas to 6 nays.

On September 10, Randolph, dissatisfied with certain provisions named in his remarks on that day which had been approved by the Convention, proposed a ratification process consisting of submission to Congress, reference by Congress to state legislatures and by these to conventions assembled in the several states with power to adopt, amend, or reject; the action of these state conventions to go before another general convention empowered to adopt or reject alterations made by state conventions and to establish finally the government under the new Constitution. This created enough machinery to prevent agreement by the operation of the physical law of friction. Chief Justice Marshall, in the transforming case of *Marbury vs. Madison*, gave us subsequently in the following quotation a rule of constituent legislation that one of the principal founders disregarded in the above motion: "That the people have an original right to establish, for their future government, such principles as, in their opinion, shall most conduce to their happiness, is the basis on which the whole American fabric has been erected. The exercise of this original right is a very great exertion; nor can it nor ought to be frequently repeated."

The number of ratifications necessary to put the new Constitution into effect came before the Convention for the first time as a definite proposition in the report of the Committee of Detail on August 6. As early as June 4, Wilson had called attention to the possible need for federating a plurality of states which should not be prevented by the selfish opposition of a few states. A note in Madison's record explains that this was probably meant *in terrorem* to the smaller states of New Jersey and Delaware. Naturally, the legalists urged the ratification of thirteen states, but this motion was overwhelmingly rejected. Ten, eight, and seven were suggested as proper numbers for the blank in Article XXI. The Convention selected nine, because important questions in the Congress of the Confederation required that vote for settlement. The persuasive argument of Madison favoring seven states as the minimum number for the



federal Union under the new Constitution appeals strongly to our reason. To remove a doubt about the power of ratifying states to include in this union non-ratifying states, the motion of King was adopted "confining the operation of the government to the states ratifying it."

The approbation of Congress provided for in Article XXII of the Committee's report was struck out. This seemed a final repudiation of the Articles of Confederation, but a retention of that provision would have given one state the power to reject the Convention's work. Moreover, an approbation of the Constitution by Congress would be a violation of the Articles creating that body.

One is surprised to learn that Hamilton, who was absent from the Convention much of the time after the withdrawal of his colleagues on July 10, offered a resolution on September 10 restoring the provision for the approbation of Congress, and leaving to state ratifying conventions the answer to the question, Shall the Constitution go into effect between the states so assenting when nine states approve? The emphatic rejection of this proposition by a vote of one for and ten against shows that the Convention had made up its mind finally on the processes of ratification.

The dissatisfaction of Gerry, Mason, and Randolph as the Convention neared the end of its labors is one of the significant facts established by Madison's record. All three had been staunch nationalists in the early stages of development. Their disaffection foreshadowed dangerous struggles over ratification in some of the states.

#### CONGRESS SUBMITS TO STATE LEGISLATURES THE COMPLETED DRAFT

[Eleven days after the Philadelphia Convention adjourned sine die, the Congress of the Confederation passed the resolution printed below. It had not been asked by the framers of the Constitution to approve the final draft. This act of the only organ of the Union under the Articles of Confederation was

pronounced by a recent writer "an abdication to take effect formally a little later." <sup>2</sup>]

RESOLUTION OF CONGRESS OF SEPTEMBER 28, 1787,  
SUBMITTING THE CONSTITUTION TO THE SEVERAL STATES

FRIDAY SEPT 28. 1787.

Congress assembled present Newhampshire Massachusetts Connecticut New York New Jersey Pensylvania. Delaware Virginia North Carolina South Carolina and Georgia and from Maryland Mr Ross

Congress having received the report of the Convention lately assembled in Philadelphia

Resolved Unanimously that the said Report with the resolutions and letter accompanying the same be transmitted to the several legislatures in Order to be submitted to a convention of Delegates chosen in each state by the people thereof in conformity to the resolves of the Convention made and provided in that case.

CIRCULAR LETTER OF THE SECRETARY OF CONGRESS, DATED  
SEPTEMBER 28, 1787, TRANSMITTING COPY OF THE  
CONSTITUTION TO THE SEVERAL GOVERNORS.

(Circular)

Office of Secretary of Congress  
Sept 28th 1787—

Sir

In obedience to an unanimous resolution of the United States in Congress Assembled, a copy of which is annexed, I have the honor to transmit to Your Excellency, the Report of the Convention lately Assembled in Philadelphia, together with the resolutions and letter accompanying the same; And have to request that Your Excellency will be pleased to lay the same before the Legislature, in order that it may be submitted to a Convention of Delegates chosen in Your State by the people of

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<sup>2</sup> *Ibid.*

the State in conformity to the resolves of the Convention, made & provided in that case.—

with the greatest respect

I have the honor &c—

C: T—

transmitting the  
Report of the Convention } }

### TYPICAL RATIFYING ORDINANCES

#### RATIFYING ORDINANCES OF CONNECTICUT, NEW JERSEY, MASSACHUSETTS, AND VIRGINIA

[The ratifying process approved by the Philadelphia Convention was a notable departure from the method prescribed in the Articles of Confederation. With the provision for amendment finally approved, it epitomized the nature of the government that displaced the old Confederation better than any other feature of the Constitution. Space limitations prevent the reproduction of all ratifying ordinances that brought the original thirteen states into the new Union. They fall into two classes—those ratifying the Constitution unconditionally, and those attaching to the ratifying ordinances recommendations of amendments. The ratifying ordinances of Connecticut and New Jersey, printed below, are typical of the first class. New Hampshire, Massachusetts, Rhode Island, New York, Virginia, North Carolina, and South Carolina proposed amendments to the Constitution as a part of their ordinances of ratification. Illustrative of such action by ratifying conventions are the ordinances of Massachusetts and Virginia.]

#### STATE OF CONNECTICUT

*In the Name of the People of the State of Connecticut.*

We the Delegates of the People of said State in general Convention assembled, pursuant to an Act of the Legislature in October last, Have assented to and ratified, and by these presents do assent to, ratify and adopt the Constitution, reported by the Convention of Delegates in Philadelphia, on the 17th

day of September A D. 1787. for the United States of America.

Done in Convention this 9th day of January A D. 1788. In witness whereof we have hereunto set our hands.

Matthew Griswold President:

|                      |                     |
|----------------------|---------------------|
| Jereh Wadsworth      | Saml Huntington     |
| Jesse Root           | Jed Huntington      |
| Isaac Lee            | Isaac Huntington    |
| Selah Heart          | Robert Robbins,     |
| Zebulon Peck jur     | Danle Foot          |
| Elisha Pitkin        | Eli Hyde            |
| Erastus Wolcott      | Joseph Woodbridge   |
| John Watson          | Stephen Billings    |
| John Treadwell       | Andrew Lee          |
| William Judd         | William Noyes       |
| Joseph Mosely        | Joshua Raymond Junr |
| Wait Goodrich        | Jerh Halsey         |
| John Curtiss         | Wheeler Coit        |
| Asa Barns            | Charles Phelps      |
| Stephen Mix Mitchell | Nathaniel Minor     |
| John Chester         | Jonathan Sturges    |
| Oliv Ellsworth       | Thaddeus Burr       |
| Roger Newberry       | Elisha Whittelsey   |
| Roger Sherman        | Joseph Moss White   |
| Pierpont Edwards     | Amos Mead           |
| Samuel Beach         | Jabez Fitch         |
| Daniel Holbrook      | Nehemiah Beardsley  |
| John Holbrook        | James Potter        |
| Gideon Buckingham    | John Chandler       |
| Lewis Mallet Jr      | John Beach          |
| Joseph Hopkins       | Hezh Rogers         |
| John Welton          | Leml Sanford        |
| Richd Law            | William Heron       |
| Amasa Learned        | Philip Burr Bradley |
| Nathan Dauchy        | Joshua Porter       |
| James Davenport      | Benjn Hinman        |
| John Davenport Junr. | Epaphras Sheldon    |
| Wm Saml Johnson      | Eleazer Curtiss     |

|                  |                      |
|------------------|----------------------|
| Elisha Mills     | John Whittlesey      |
| Elephth Dyer     | Danl Nathl Brinsmade |
| Jeda Elderkin    | Thomas Fenn          |
| Simeon Smith     | David Smith          |
| Hendrick Dow     | Robert McCane        |
| Seth Paine       | Daniel Sherman       |
| Asa Witter       | Samuel Orton         |
| Moses Cleaveland | Asher Miller         |
| Sampson Howe     | Saml H. Parsons      |
| Willm Danielson  | Ebenr White          |
| Wm Williams      | Hezh Goodrich        |
| James Bradford   | Dyar Throop          |
| Joshua Dunlop    | Jabez Chapman        |
| Daniel Learned   | Cornelius Higgins    |
| Moses Campbell   | Hezekiah Brainerd    |
| Benjamin Dow     | Theophilus Morgan    |
| Oliver Wolcott   | Hezh Lane            |
| Jedediah Strong  | William Hart         |
| Moses Hawley     | Saml Shipman         |
| Charles Burrall  | Jeremiah West        |
| Nathan Hale      | Samuel Chapman       |
| Daniel Miles     | Ichabod Warner       |
| Asaph Hall       | Samuel Carver        |
| Isaac Burnham    | Jeremiah Ripley      |
| John Wilder      | Ephraim Root         |
| Mark Prindle     | John Phelps          |
| Jedidiah Hubbel  | Isaac Foot           |
| Aaron Austin     | Abijah Sessions      |
| Samuel Canfield  | Caleb Holt           |
| Daniel Everitt   | Seth Crocker         |
| Hez: Fitch       |                      |

State of Connecticut, ss. Hartford January ninth, Anno Domini one thousand, seven hundred and eighty eight.

The foregoing Ratification was agreed to, and signed as above, by one hundred and twenty eight, and dissented to by

forty Delegates in Convention, which is a Majority of eighty eight.

Certified by Matthew Griswold President.  
Teste Jedidiah Strong Secretary—

STATE OF NEW JERSEY

*In Convention of the State of New Jersey*

Whereas a convention of Delegates from the following States, Vizt. New Hampshire, Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia, met at Philadelphia for the purpose of deliberating on, and forming a constitution for the United States of America, finished their Session on the seventeenth day of September last and reported to Congress the form which they had agreed upon, in the words following, Vizt— . . .

And Whereas Congress on the twenty eighth day of September last unanimously did resolve “that the said report with the Resolutions and letter accompanying the same, be transmitted to the several Legislatures, in order to be submitted to a convention of Delegates, chosen in each State by the People thereof, in conformity to the Resolves of the convention made and provided in that case.”

And Whereas the Legislature of this State did on the twenty ninth day of October last Resolve in the words following, Vizt— “Resolved unanimously, That it be recommended to such of the Inhabitants of this State as are entitled to vote for Representatives in General Assembly, to meet in their respective counties on the fourth Tuesday in November next, at the several places fixed by law for holding the annual elections, to choose three suitable persons to serve as Delegates from each County in a State Convention, for the purposes herein before-mentioned, and that the same be conducted agreeably to the mode, and conformably with the Rules and Regulations prescribed for conducting such Elections.”

Resolved unanimously, That the Persons so Elected to serve

in State Convention, do assemble and meet together on the second Tuesday in December next, at Trenton, in the County of Hunterdon, then and there to take into Consideration the aforesaid Constitution; and if approved of by them, finally to Ratify the same in behalf and on the part of this State; and make Report thereof to the United States in Congress assembled, in Conformity with the Resolutions thereto annexed."

"Resolved, That the Sheriffs of the respective Counties of this State shall be, and they are hereby required to give as timely Notice as may be, by Advertisements to the People of their Counties of the time, place and Purpose of holding Elections as aforesaid."

And Whereas the Legislature of this State did also on the first day of November last make and pass the following Act, Vizt—"An Act to authorize the People of this State to meet in Convention, deliberate upon, agree to, and ratify the Constitution of the United States, proposed by the late General Convention. Be it Enacted by the Council and General Assembly of this State, and it is hereby enacted by the Authority of the same, That it shall and may be lawful for the People thereof, by their Delegates, to meet in Convention, to deliberate upon, and, if approved of by them, to ratify the Constitution for the United States, proposed by the General Convention, held at Philadelphia, and every Act, matter and clause therein contained, conformably to the Resolutions of the Legislature, passed the twenty-ninth day of October, Seventeen hundred and eighty seven, any Law, Usage or Custom to the contrary in any wise notwithstanding."

Now be it known that we the Delegates of the State of New-Jersey chosen by the People thereof for the purposes aforesaid having maturely deliberated on, and considered the aforesaid proposed Constitution, do hereby for and on the behalf of the People of the said State of New-Jersey agree to, ratify and confirm the same and every part thereof.

Done in Convention by the unanimous consent of the members present, this eighteenth day of December in the year of our Lord one thousand seven hundred and eighty seven, and of the

Independence of the United States of America the twelfth.—  
In Witness whereof we have hereunto subscribed our names.

Note, Before the signing hereof, the following words, viz,  
“Cession of” were interlined between the fifteenth and sixteenth  
lines on the second sheet.

John Stevens President—  
and Delegate from the County of Hunterdon

|                          |   |                                                               |
|--------------------------|---|---------------------------------------------------------------|
| County of Bergen .....   | { | John Fell<br>Peter Zabriskie<br>Cornelius Hennion             |
| Essex .....              | { | John Chetwood<br>Samuel Hay<br>David Crane                    |
| Middlesex .....          | { | John Neilson<br>John Beatty<br>Benjamin Manning               |
| Monmouth .....           | { | Elisha Lawrence<br>Samuel Breese<br>William Crawford          |
| Somerset .....           | { | Jno Witherspoon<br>Jacob R Hardenbergh<br>Fred: Frelinghuysen |
| Burlington .....         | { | Thomas Reynolds<br>Geo. Anderson<br>Joshua M. Wallace         |
| Gloucester .....         | { | Rd Howels<br>Andw Hunter<br>Benjamin Whitall                  |
| Salem .....              | { | Whitten Cripps<br>Edmund Wetherby                             |
| County of Cape-May ..... | { | Jesse Hand<br>Jeremiah Eldredge<br>Matthew Whilldin           |



|                  |   |                                                         |
|------------------|---|---------------------------------------------------------|
| Hunterdon .....  | { | David Brearley<br>Joshua Corshon                        |
| Morris .....     | { | William Windes<br>William Woodhull<br>John Jacob Faesch |
| Cumberland ..... | { | David Potter<br>Jonathan Bowen<br>Eli Elmer             |
| Sussex .....     | { | Robert Ogden<br>Thoms Anderson<br>Robt Hoops            |

Attest. Saml. W. Stockton Secy.

## STATE OF MASSACHUSETTS

*In Convention of the delegates of the People of the  
Commonwealth of Massachusetts February 6th 1788*

The Convention have impartially discussed, & fully considered the Constitution for the United States of America, reported to Congress by the Convention of Delegates from the United States of America, & submitted to us by a resolution of the General Court of the said Commonwealth, passed the twenty fifth day of October last past, & acknowledging with grateful hearts, the goodness of the Supreme Ruler of the Universe in affording the People of the United States in the course of his providence an opportunity deliberately & peaceably without fraud or surprize of entering into an explicit & solemn Compact with each other by assenting to & ratifying a New Constitution in order to form a more perfect Union, establish Justice, insure Domestic tranquillity, provide for the common defence, promote the general welfare & secure the blessings of Liberty to themselves & their posterity; Do in the name & in behalf of the People of the Commonwealth of Massachusetts assent to & ratify the said Constitution for the United States of America.

And as it is the opinion of this Convention that certain amendments & alterations in the said Constitution would remove the

fears & quiet the apprehensions of many of the good people of this Commonwealth & more effectually guard against an undue administration of the Federal Government, The Convention do therefore recommend that the following alterations & provisions be introduced into the said Constitution.

*First*, That it be explicitly declared that all Powers not expressly delegated by the aforesaid Constitution are reserved to the several States to be by them exercised.

*Secondly*, That there shall be one representative to every thirty thousand persons according to the Census mentioned in the Constitution until the whole number of the Representatives amounts to Two hundred.

*Thirdly*, That Congress do not exercise the powers vested in them by the fourth Section of the first article, but in cases when a State shall neglect or refuse to make the regulations therein mentioned or shall make regulations subversive of the rights of the People to a free & equal representation in Congress agreeably to the Constitution.

*Fourthly*, That Congress do not lay direct Taxes but when the Monies arising from the Impost & Excise are insufficient for the publick exigencies nor then until Congress shall have first made a requisition upon the States to assess levy & pay their respective proportions of such Requisition agreeably to the Census fixed in the said Constitution; in such way & manner as the Legislature of the States shall think best, & in such case if any State shall neglect or refuse to pay its proportion pursuant to such requisition then Congress may assess & levy such State's proportion together with interest thereon at the rate of Six per cent per annum from the time of payment prescribed in such requisition

*Fifthly*, That Congress erect no Company of Merchants with exclusive advantages of commerce.

*Sixthly*, That no person shall be tried for any Crime by which he may incur an infamous punishment or loss of life until he be first indicted by a Grand Jury, except in such cases as may arise in the Government & regulation of the Land & Naval forces.

*Seventhly*, The Supreme Judicial Federal Court shall have no

jurisdiction of Causes between Citizens of different States unless the matter in dispute whether it concerns the realty or personalty be of the value of three thousand dollars at the least, nor shall the Federal Judicial Powers extend to any actions between Citizens of different States where the matter in dispute whether it concerns the Realty or personalty is not of the value of Fifteen hundred dollars at the least.

*Eighthly*, In civil actions between Citizens of different States every issue of fact arising in Actions at common law shall be tried by a Jury if the parties or either of them request it.

*Ninthly*, Congress shall at no time consent that any person holding an office of trust or profit under the United States shall accept of a title of Nobility or any other title or office from any King, prince or Foreign State.

And the Convention do in the name & in behalf of the People of this Commonwealth enjoin it upon their Representatives in Congress at all times until the alterations & provisions aforesaid have been considered agreeably to the Fifth article of the said Constitution to exert all their influence & use all reasonable & legal methods to obtain a ratification of the said alterations & provisions in such manner as is provided in the said Article.

And that the United States in Congress Assembled may have due notice of the Assent & Ratification of the said Constitution by this Convention it is, Resolved, that the Assent & Ratification aforesaid be engrossed on Parchment together with the recommendation & injunction aforesaid & with this resolution & that His Excellency John Hancock Esqr President & the Honble William Cushing Esqr Vice President, of this Convention transmit the same, counter-signed by the Secretary of the Convention under their hands & seals to the United States in Congress Assembled

John Hancock President  
Wm Cushing Vice President

George Richards Minot, Secretary.

Pursuant to the Resolution aforesaid We the President & Vice President abovenamed Do hereby transmit to the United States in Congress Assembled, the same Resolution with the above

Assent and Ratification of the Constitution aforesaid for the United States, And the recommendation & injunction above specified.

In Witness whereof We have hereunto set our hands & Seals at Boston in the Commonwealth aforesaid this Seventh day of February Anno Domini, one thousand Seven Hundred & Eighty eight, and in the Twelfth year of the Independence of the United States of America.

John Hancock President [Seal.]

Wm Cushing Vice President [Seal.]

STATE OF VIRGINIA

Virginia to wit

We the Delegates of the People of Virginia duly elected in pursuance of a recommendation from the General Assembly and now met in Convention having fully and freely investigated and discussed the proceedings of the Foederal Convention and being prepared as well as the most mature deliberation hath enabled us to decide thereon Do in the name and in behalf of the People of Virginia declare and make known that the powers granted under the Constitution being derived from the People of the United States may be resumed by them whensoever the same shall be perverted to their injury or oppression and that every power not granted thereby remains with them and at their will: that therefore no right of any denomination can be cancelled abridged restrained or modified by the Congress by the Senate or House of Representatives acting in any Capacity by the President or any Department or Officer of the United States except in those instances in which power is given by the Constitution for those purposes: & that among other essential rights the liberty of Conscience and of the Press cannot be cancelled abridged restrained or modified by any authority of the United States. With these impressions with a solemn appeal to the Searcher of hearts for the purity of our intentions and under the conviction that whatsoever imperfections may exist in the Constitution ought rather to be examined in the mode prescribed therein than to bring the Union into danger by a delay with a hope of obtaining

Amendments previous to the Ratification, We the said Delegates in the name and in behalf of the People of Virginia do by these presents assent to and ratify the Constitution recommended on the seventeenth day of September one thousand seven hundred and eighty seven by the Foederal Convention for the Government of the United States hereby announcing to all those whom it may concern that the said Constitution is binding upon the said People according to an authentic Copy hereto annexed in the Words following; . . .

Done in Convention this twenty Sixth day of June one thousand seven hundred and eighty eight

By Order of the Convention

Edmd Pendleton President [Seal.] . . .

Virginia towit:

Subsequent Amendments agreed to in Convention as necessary to the proposed Constitution of Government for the United States, recommended to the consideration of the Congress which shall first assemble under the said Constitution to be acted upon according to the mode prescribed in the fifth article thereof:

Videlicet;

That there be a Declaration or Bill of Rights asserting and securing from encroachment the essential and unalienable Rights of the People in some such manner as the following;

First, That there are certain natural rights of which men, when they form a social compact cannot deprive or divest their posterity, among which are the enjoyment of life and liberty, with the means of acquiring, possessing and protecting property, and pursuing and obtaining happiness and safety. Second. That all power is naturally vested in and consequently derived from the people; that Magistrates, therefore, are their trustees and agents and at all times amenable to them. Third, That Government ought to be instituted for the common benefit, protection and security of the People; and that the doctrine of non-resistance against arbitrary power and oppression is absurd slavish, and destructive of the good and happiness of mankind. Fourth, That no man or set of Men are entitled to exclusive or separate public emoluments or privileges from the community, but in Considera-

tion of public services; which not being descendible, neither ought the offices of Magistrate, Legislator or Judge, or any other public office to be hereditary. Fifth, That the legislative, executive, and judiciary powers of Government should be separate and distinct, and that the members of the two first may be restrained from oppression by feeling and participating the public burthens, they should, at fixt periods be reduced to a private station, return into the mass of the people; and the vacancies be supplied by certain and regular elections; in which all or any part of the former members to be eligible or ineligible, as the rules of the Constitution of Government, and the laws shall direct. Sixth, That elections of representatives in the legislature ought to be free and frequent, and all men having sufficient evidence of permanent common interest with and attachment to the Community ought to have the right of suffrage: and no aid, charge, tax or fee can be set, rated, or levied upon the people without their own consent, or that of their representatives so elected, nor can they be bound by any law to which they have not in like manner assented for the public good. Seventh, That all power of suspending laws or the execution of laws by any authority, without the consent of the representatives of the people in the legislature is injurious to their rights, and ought not to be exercised. Eighth, That in all capital and criminal prosecutions, a man hath a right to demand the cause and nature of his accusation, to be confronted with the accusers and witnesses, to call for evidence and be allowed counsel in his favor, and to a fair and speedy trial by an impartial Jury of his vicinage, without whose unanimous consent he cannot be found guilty, (except in the government of the land and naval forces) nor can he be compelled to give evidence against himself. Ninth. That no freeman ought to be taken, imprisoned, or disseised of his freehold, liberties, privileges or franchises, or outlawed or exiled, or in any manner destroyed or deprived of his life, liberty or property but by the law of the land. Tenth. That every freeman restrained of his liberty is entitled to a remedy to enquire into the lawfulness thereof, and to remove the same, if unlawful, and that such remedy ought not to be denied nor delayed. Eleventh. That in

controversies respecting property, and in suits between man and man, the ancient trial by Jury is one of the greatest Securities to the rights of the people, and ought to remain sacred and inviolable. Twelfth. That every freeman ought to find a certain remedy by recourse to the laws for all injuries and wrongs he may receive in his person, property or character. He ought to obtain right and justice freely without sale, compleatly and without denial, promptly and without delay, and that all establishments or regulations contravening these rights, are oppressive and unjust. Thirteenth, That excessive Bail ought not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. Fourteenth, That every freeman has a right to be secure from all unreasonable searches and siezures of his person, his papers and his property; all warrants, therefore, to search suspected places, or sieze any freeman, his papers or property, without information upon Oath (or affirmation of a person religiously scrupulous of taking an oath) of legal and sufficient cause, are grievous and oppressive; and all general Warrants to search suspected places, or to apprehend any suspected person, without specially naming or describing the place or person, are dangerous and ought not to be granted. Fifteenth, That the people have a right peaceably to assemble together to consult for the common good, or to instruct their Representatives; and that every freeman has a right to petition or apply to the legislature for redress of grievances. Sixteenth, That the people have a right to freedom of speech, and of writing and publishing their Sentiments; but the freedom of the press is one of the greatest bulwarks of liberty and ought not to be violated. Seventeenth, That the people have a right to keep and bear arms; that a well regulated Militia composed of the body of the people trained to arms is the proper, natural and safe defence of a free State. That standing armies in time of peace are dangerous to liberty, and therefore ought to be avoided, as far as the circumstances and protection of the Community will admit; and that in all cases the military should be under strict subordination to and governed by the Civil power. Eighteenth, That no Soldier in time of peace ought to be quartered in any house without the consent of the

owner, and in time of war in such manner only as the laws direct. Nineteenth, That any person religiously scrupulous of bearing arms ought to be exempted upon payment of an equivalent to employ another to bear arms in his stead. Twentieth, That religion or the duty which we owe to our Creator, and the manner of discharging it can be directed only by reason and conviction, not by force or violence, and therefore all men have an equal, natural and unalienable right to the free exercise of religion according to the dictates of conscience, and that no particular religious sect or society ought to be favored or established by Law in preference to others.

*Amendments to the Body of the Constitution*

First, That each State in the Union shall respectively retain every power, jurisdiction and right which is not by this Constitution delegated to the Congress of the United States or to the departments of the Foederal Government. Second, That there shall be one representative for every thirty thousand, according to the Enumeration or Census mentioned in the Constitution, until the whole number of representatives amounts to two hundred; after which that number shall be continued or encreased as the Congress shall direct, upon the principles fixed by the Constitution by apportioning the Representatives of each State to some greater number of people from time to time as population encreases. Third, When Congress shall lay direct taxes or excises, they shall immediately inform the Executive power of each State of the quota of such state according to the Census herein directed, which is proposed to be thereby raised; And if the Legislature of any State shall pass a law which shall be effectual for raising such quota at the time required by Congress, the taxes and excises laid by Congress shall not be collected, in such State. Fourth, That the members of the Senate and House of Representatives shall be ineligible to, and incapable of holding, any civil office under the authority of the United States, during the time for which they shall respectively be elected. Fifth, That the Journals of the proceedings of the Senate and



House of Representatives shall be published at least once in every year, except such parts thereof relating to treaties, alliances or military operations, as in their judgment require secrecy. Sixth, That a regular statement and account of the receipts and expenditures of all public money shall be published at least once in every year. Seventh, That no commercial treaty shall be ratified without the concurrence of two thirds of the whole number of the members of the Senate; and no Treaty ceding, contracting, restraining or suspending the territorial rights or claims of the United States, or any of them or their, or any of their rights or claims to fishing in the American seas, or navigating the American rivers shall be but in cases of the most urgent and extreme necessity, nor shall any such treaty be ratified without the concurrence of three fourths of the whole number of the members of both houses respectively. Eighth, That no navigation law, or law regulating Commerce shall be passed without the consent of two thirds of the Members present in both houses. Ninth, That no standing army or regular troops shall be raised or kept up in time of peace, without the consent of two thirds of the members present in both houses. Tenth, That no soldier shall be enlisted for any longer term than four years, except in time of war, and then for no longer term than the continuance of the war. Eleventh, That each State respectively shall have the power to provide for organizing, arming and disciplining it's own Militia, whensoever Congress shall omit or neglect to provide for the same. That the Militia shall not be subject to Martial law, except when in actual service in time of war, invasion, or rebellion; and when not in the actual service of the United States, shall be subject only to such fines, penalties and punishments as shall be directed or inflicted by the laws of its own State. Twelfth That the exclusive power of legislation given to Congress over the Foederal Town and its adjacent District and other places purchased or to be purchased by Congress of any of the States shall extend only to such regulations as respect the police and good government thereof. Thirteenth, That no person shall be capable of being President of the United States for more than eight years in any term of sixteen years. Fourteenth That the judicial

power of the United States shall be vested in one supreme Court, and in such courts of Admiralty as Congress may from time to time ordain and establish in any of the different States: The Judicial power shall extend to all cases in Law and Equity arising under treaties made, or which shall be made under the authority of the United States; to all cases affecting ambassadors other foreign ministers and consuls; to all cases of Admiralty and maritime jurisdiction; to controversies between two or States, and between parties claiming lands under the grants of different States. In all cases affecting ambassadors, other foreign ministers and Consuls, and those in which a State shall be a party, the supreme court shall have original jurisdiction; in all other cases before mentioned the supreme Court shall have appellate jurisdiction as to matters of law only: except in cases of equity, and of admiralty and maritime jurisdiction, in which the Supreme Court shall have appellate jurisdiction both as to law and fact, with such exceptions and under such regulations as the Congress shall make. But the judicial power of the United States shall extend to no case where the cause of action shall have originated before the ratification of this Constitution; except in disputes between States about their Territory, disputes between persons claiming lands under the grants of different States, and suits for debts due to the United States. Fifteenth, That in criminal prosecutions no man shall be restrained in the exercise of the usual and accustomed right of challenging or excepting to the Jury. Sixteenth, That Congress shall not alter, modify or interfere in the times, places, or manner of holding elections for Senators and Representatives or either of them, except when the legislature of any State shall neglect, refuse or be disabled by invasion or rebellion to prescribe the same. Seventeenth, That those clauses which declare that Congress shall not exercise certain powers be not interpreted in any manner whatsoever to extend the powers of Congress. But that they may be construed either as making exceptions to the specified powers where this shall be the case, or otherwise as inserted merely for greater caution. Eighteenth, That the laws ascertaining the compensation to Senators and Representatives for their services be postponed in their

operation, until after the election of Representatives immediately succeeding the passing thereof; that excepted, which shall first be passed on the Subject. Nineteenth, That some Tribunal other than the Senate be provided for trying impeachments of Senators. Twentieth, That the Salary of a Judge shall not be encreased or diminished during his continuance in Office, otherwise than by general regulations of Salary which may take place on a revision of the subject at stated periods of not less than seven years to commence from the time such Salaries shall be first ascertained by Congress. And the Convention do, in the name and behalf of the People of this Commonwealth enjoin it upon their Representatives in Congress to exert all their influence and use all reasonable and legal methods to obtain a Ratification of the foregoing alterations and provisions in the manner provided by the fifth article of the said Constitution; and in all Congressional laws to be passed in the mean time, to conform to the spirit of those Amendments as far as the said Constitution will admit.

Done in Convention this twenty seventh day of June in the year of our Lord one thousand seven hundred and eighty eight.

By order of the Convention.

Edmd Pendleton President [Seal.]

PART TWO

LEGISLATIVE ORGANS OF THE FEDERAL  
GOVERNMENT

INTRODUCTION

The material following Part One of this volume was taken from notes laboriously made during the sessions of the federal Convention by James Madison. To facilitate reading, his abbreviations are replaced by words for which they stand, punctuation is revised, and the spelling of proper names is corrected. Wherever votes are recorded, yeas are given first, then nays, with the total of each. Care has been taken to preserve the meaning of the material. These notes give us our most reliable, our most continuous, record of propositions submitted to the Convention, of debates and developments arising therefrom, and of methods of coordinating and harmonizing conclusions reached by such processes. The word "drafting" in the title of this book includes all elements of constitution-making that resulted in the document submitted by the Philadelphia Convention to the thirteen original states for their ratification. Subsequent additions to that document are not included.

The feasibility of using this source material to clarify drafting processes depends upon two things. First, provisions of the completed Constitution must be placed in large groups, called parts in this book, preferably on a functional basis; and each part must be divided into chapters on the same basis. This seems the most rational method of presenting the purpose of the founders and the value of each provision. (See Table of Contents for an outline of this arrangement.) Second, the development of each proposition so classified must be shown by selections from Madi-

son's Notes, in which the makers of the Constitution tell how the drafting process worked from initiation to culmination. (See introductions to documents in Chapter 3.) After establishing conclusions reached on each question before the Convention in this manner, the compiler supplements the record with a review of deliberations intended to analyze and evaluate points considered in debate.

On the basis of relationship, it is helpful to reproduce consecutively in this volume the scattered proceedings recorded in Madison's Notes, dealing with the structure of the federal legislature and the difficult problem of representation in its two branches, which developed the most critical situation that arose in the Philadelphia Convention. These proceedings are printed seriatim in seven chapters with the following headings: "Bifurcation of the Federal Legislature," "The House of Representatives," "The Senate," and four chapters on "Representation in the Federal Legislature." It is believed that this arrangement of the sources will give the reader the most authoritative and clarifying description of what the drafters advocated and what their compromises imply.

## CHAPTER 5

### BIFURCATION OF THE FEDERAL LEGISLATURE

**Preliminaries in Committee of the Whole.** Resolved, that the national legislature ought to consist of two branches. Proposition in Virginia Plan. *May 29*

The third resolution, "that the national legislature ought to consist of two branches," was agreed to without debate or dissent, except that of Pennsylvania—given probably from complaisance to Dr. Franklin, who was understood to be partial to a single house of legislation. *May 31*

**Fundamentals in Convention.** Resolved, that the national legislature ought to consist of two branches. Second resolution, Committee of the Whole. *June 19*

To harmonize with the wording of the first resolution, the second resolution was changed without objection so as to read, "The legislature of the United States ought to consist of two branches." *June 20*

Lansing: Observed that the true question here was whether the Convention would adhere to or depart from the foundation of the present Confederacy; and moved, instead of the second resolution, "that the powers of legislation be vested in the United States in Congress." He had already assigned two reasons against such an innovation as was proposed—first, the want of competent powers in the Convention; secondly, the state of the public mind. It had been observed by Mr. Madison, in discussing the first point that in two states, the delegates to Congress were chosen by the people. Notwithstanding the

first appearance of this remark, it had in fact no weight, as the delegates, however chosen, did not represent the people merely as so many individuals; but as forming a sovereign state. Mr. Randolph put it, he said, on its true footing, namely that the public safety superseded the scruple arising from the review of our powers. But in order to feel the force of this consideration, the same impression must be had of the public danger. He had not himself the same impression, and could not therefore dismiss his scruple. Mr. Wilson contended that as the Convention were only to recommend, they might recommend what they pleased. He differed much from him. Any act whatever of so respectable a body must have a great effect; and if it does not succeed, will be a source of great dissensions. He admitted that there was no certain criterion of the public mind on the subject. He therefore recurred to the evidence of it given by the opposition in the states to the scheme of an impost. It could not be expected that those possessing sovereignty could ever voluntarily part with it. It was not to be expected from any one state, much less from thirteen. He proceeded to make some observations on the plan itself, and the arguments urged in support of it. The point of representation could receive no elucidation from the case of England. The corruption of the boroughs did not proceed from their comparative smallness; but from the actual fewness of the inhabitants, some of them not having more than one or two. A great inequality existed in the counties of England. Yet the like complaint of peculiar corruption in the small ones had not been made. It had been said that Congress represent the state prejudices—will not any other body whether chosen by the legislatures or people of the states also represent their prejudices? It had been asserted by his colleague (Col. Hamilton) that there was no coincidence of interests among the large states that ought to excite fears of oppression in the smaller. If it were true that such a uniformity of interests existed among the states, there was equal safety for all of them whether the representation remained as heretofore or were proportioned as now proposed. It is proposed that the general legislature

shall have a negative on the laws of the states. Is it conceivable that there will be leisure for such a task? There will, on the most moderate calculation, be as many acts sent up from the states as there are days in the year. Will the members of the general legislature be competent judges? Will a gentleman from Georgia be a judge of the expediency of a law which is to operate in New Hampshire? Such a negative would be more injurious than that of Great Britain heretofore was. It is said that the national government must have the influence arising from the grant of offices and honors. In order to render such a government effectual, he believed such an influence to be necessary. But if the states will not agree to it, it is in vain, worse than in vain, to make the proposition. If this influence is to be attained, the states must be entirely abolished. Will anyone say this would ever be agreed to? He doubted whether any general government, equally beneficial to all, can be attained. That now under consideration, he is sure, must be utterly unattainable. He had another objection. The system was too novel and complex. No man could foresee what its operation will be, either with respect to the general government or the state governments. One or other, it has been surmised, must absorb the whole.

Mason: Did not expect this point would have been reagitated. The essential differences between the two plans had been clearly stated. The principal objections against that of Mr. Randolph were the *want of power* and the *want of practicability*. There can be no weight in the first, as the fiat is not to be *here*, but in the people. He thought with his colleague (Mr. Randolph) that there were besides certain crises, in which all the ordinary cautions yielded to public necessity. He gave as an example the eventual treaty with Great Britain, in forming which the commissioners of the United States had boldly disregarded the improvident shackles of Congress; had given to their country an honorable and happy peace, and, instead of being censured for the transgression of their powers, had raised to themselves a monument more durable than brass. The *impracticability* of gaining the public concurrence,



he thought, was still more groundless. Mr. Lansing had cited the attempts of Congress to gain an enlargement of their powers, and had inferred from the miscarriage of these attempts, the hopelessness of the plan which he (Mr. Lansing) opposed. He thought a very different inference ought to have been drawn, viz., that the plan which Mr. Lansing espoused, and which proposed to augment the powers of Congress, never could be expected to succeed. He meant not to throw any reflections on Congress as a body, much less on any particular members of it. He meant, however, to speak his sentiments without reserve on this subject; it was a privilege of age, and perhaps the only compensation which nature had given for the privation of so many other enjoyments; and he should not scruple to exercise it freely. Is it to be thought that the people of America, so watchful over their interests, so jealous of their liberties, will give up their all, will surrender both the sword and the purse to the same body—and that, too, not chosen immediately by themselves? They never will. They never ought. Will they trust such a body with the regulation of their trade, with the regulation of their taxes, with all the other great powers which are in contemplation? Will they give unbounded confidence to a secret journal—to the intrigues, to the factions, which in the nature of things appertain to such an assembly? If any man doubts the existence of these characters of Congress, let him consult their journals for the years '78, '79, and '80. It will be said that if the people are averse to parting with power, why is it hoped that they will part with it to a national legislature? The proper answer is that in this case they do not part with power: they only transfer it from one set of immediate representatives to another set. Much has been said of the unsettled state of the mind of the people. He believed the mind of the people of America, as elsewhere, was unsettled as to some points, but settled as to others. In two points he was sure it was well settled—first, in an attachment to republican government; secondly, in an attachment to more than one branch in the legislature. Their constitutions accord so generally in both these circumstances

that they seem almost to have been preconcerted. This must either have been a miracle or have resulted from the genius of the people. The only exceptions to the establishment of two branches in the legislature are the state of Pennsylvania and Congress; and the latter the only single one not chosen by the people themselves. What has been the consequence? The people have been constantly averse to giving that body further powers. It was acknowledged by Mr. Paterson that his plan could not be enforced without military coercion. Does he consider the force of this concession? The most jarring elements of nature, fire and water themselves, are not more incompatible than such a mixture of civil liberty and military execution. Will the militia march from one state into another, in order to collect the arrears of taxes from the delinquent members of the republic? Will they maintain an army for this purpose? Will not the citizens of the invaded state assist one another till they rise as one man and shake off the Union altogether? Rebellion is the only case in which the military force of the state can be properly exerted against its citizens. In one point of view, he was struck with horror at the prospect of recurring to this expedient. To punish the non-payment of taxes with death was a severity not yet adopted by despotism itself; yet this unexampled cruelty would be mercy compared to a military collection of revenue, in which the bayonet could make no discrimination between the innocent and the guilty. He took this occasion to repeat that notwithstanding his solicitude to establish a national government, he never would agree to abolish the state governments, or render them absolutely insignificant. They were as necessary as the general government, and he would be equally careful to preserve them. He was aware of the difficulty of drawing the line between them, but hoped it was not insurmountable. The Convention, though comprising so many distinguished characters, could not be expected to make a faultless government. And he would prefer trusting to posterity the amendment of its defects rather than to push the experiment too far.

L. Martin: Agreed with Col. Mason as to the importance of the

state governments: he would support them at the expense of the general government, which was instituted for the purpose of that support. He saw no necessity for two branches; and if it existed, Congress might be organized into two. He considered Congress as representing the people, being chosen by the legislatures, who were chosen by the people. At any rate, Congress represented the legislature; and it was the legislatures, not the people, who refused to enlarge their powers. Nor could the rule of voting have been the ground of objection, otherwise ten of the states must always have been ready to place further confidence in Congress. The causes of repugnance must therefore be looked for elsewhere. At the separation from the British Empire, the people of America preferred the establishment of themselves into thirteen separate sovereignties instead of incorporating themselves into one. To these they look up for the security of their lives, liberties, and properties; to these they must look up. The federal government they formed to defend the whole against foreign nations in time of war, and to defend the lesser states against the ambition of the larger. They are afraid of granting power unnecessarily, lest they should defeat the original end of the Union; lest the powers should prove dangerous to the sovereignties of the particular states which the Union was meant to support; and expose the lesser to being swallowed up by the larger. He conceived also that the people of the states, having already vested their powers in their respective legislatures, could not resume them without a dissolution of their governments. He was against conventions in the states—was not against assisting states against rebellious subjects—thought the *federal* plan of Mr. Paterson did not require coercion more than the *national one*, as the latter must depend for the deficiency of its revenues on requisitions and quotas—and that a national judiciary, extended into the states, would be ineffectual, and would be viewed with a jealousy inconsistent with its usefulness.

Sherman: Seconded and supported Mr. Lansing's motion. He admitted two branches to be necessary in the state legislatures,

but saw no necessity in a confederacy of states. The examples were all of a single council. Congress carried us through the war, and perhaps as well as any government could have done. The complaints at present are not that the views of Congress are unwise or unfaithful, but that their powers are insufficient for the execution of their views. The national debt and the want of power somewhere to draw forth the national resources are the great matters that press. All the states were sensible of the defect of power in Congress. He thought much might be said in apology for the failure of the state legislatures to comply with the Confederation. They were afraid of leaning too hard on the people by accumulating taxes; no *constitutional* rule had been or could be observed in the quotas; the accounts also were unsettled, and every state supposed itself in advance rather than in arrears. For want of a general system, taxes to a due amount had not been drawn from trade, which was the most convenient resource. As almost all the states had agreed to the recommendation of Congress on the subject of an impost, it appeared clearly that they were willing to trust Congress with power to draw a revenue from trade. There is no weight, therefore, in the argument drawn from a distrust of Congress; for money matters being the most important of all, if the people will trust them with power as to them, they will trust them with any other necessary powers. Congress indeed by the Confederation have in fact the right of saying how much the people shall pay and to what purpose it shall be applied: and this right was granted to them in the expectation that it would in all cases have its effect. If another branch were to be added to Congress to be chosen by the people, it would serve to embarrass. The people would not much interest themselves in the elections, a few designing men in the large districts would carry their points, and the people would have no more confidence in their new representatives than in Congress. He saw no reason why the state legislatures should be unfriendly, as had been suggested, to Congress. If they appoint Congress and approve of their measures, they would be rather favorable and partial to them. The disparity of the states in

point of size he perceived was the main difficulty. But the large states had not yet suffered from the equality of votes enjoyed by the small ones. In all great and general points, the interests of all the states were the same. The state of Virginia, notwithstanding the equality of votes, ratified the Confederation without even proposing any alteration. Massachusetts also ratified without any material difficulty, etc. In none of the ratifications is the want of two branches noticed or complained of. To consolidate the states as some had proposed would dissolve our treaties with foreign nations which had been formed with us as *confederated* states. He did not however suppose that the creation of two branches in the legislature would have such an effect. If the difficulty on the subject of representation can not be otherwise got over, he would agree to have two branches, and a proportional representation in one of them; provided each state had an equal voice in the other. This was necessary to secure the rights of the lesser states; otherwise three or four of the large states would rule the others as they please. Each state like each individual had its peculiar habits, usages, and manners, which constituted its happiness. It would not therefore give to others a power over this happiness, any more than an individual would do, when he could avoid it.

Wilson: Urged the necessity of two branches; observed that if a proper model was not to be found in other confederacies, it was not to be wondered at. The number of them was small and the duration of some at least short. The Amphictyonic and Achaean were formed in the infancy of political science; and appear by their history and fate to have contained radical defects. The Swiss and Belgic confederacies were held together not by any vital principle of energy but by the incumbent pressure of formidable neighboring nations. The German owed its continuance to the influence of the House of Austria. He appealed to our own experience for the defects of our Confederacy. He had been six years of the twelve since the commencement of the Revolution a member of Congress, and had felt all its weaknesses. He appealed to the recollection of others whether on many important occasions the public inter-

est had not been obstructed by the small members of the Union. The success of the Revolution was owing to other causes than the constitution of Congress. In many instances it went on even against the difficulties arising from Congress themselves. He admitted that the large states did accede, as had been stated, to the Confederation in its present form. But it was the effect of necessity, not of choice. There are other instances of their yielding from the same motive to the unreasonable measures of the small states. The situation of things is now a little altered. He insisted that a jealousy would exist between the state legislatures and the general legislature: observing that the members of the former would have views and feelings very distinct in this respect from their constituents. A private citizen of a state is indifferent whether power be exercised by the general or state legislatures, provided it be exercised most for his happiness. His representative has an interest in its being exercised by the body to which he belongs. He will therefore view the national legislature with the eye of a jealous rival. He observed that the addresses of Congress to the people at large had always been better received and produced greater effect than those made to the legislatures.

On the question for postponing in order to take up Lansing's proposition "to vest the powers of legislation in Congress": Yeas 4 (Connecticut, New York, New Jersey, Delaware); nays 6 (Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia); divided 1 (Maryland).

Johnson: On a comparison of the two plans which had been proposed from Virginia and New Jersey, it appeared that the peculiarity which characterized the latter was its being calculated to preserve the individuality of the states. The plan from Virginia did not profess to destroy this individuality altogether, but was charged with such a tendency. One gentleman alone (Col. Hamilton) in his animadversions on the plan of New Jersey, boldly and decisively contended for an abolition of the state governments. Mr. Wilson and the gentlemen from Virginia, who also were adversaries of the plan of New Jersey, held a different language. They wished to leave the states in

*June 21*

possession of a considerable though a subordinate jurisdiction. They had not yet however shown how this could consist with, or be secured against the general sovereignty and jurisdiction, which they proposed to give to the national government. If this could be shown in such a manner as to satisfy the patrons of the New Jersey propositions, that the individuality of the states would not be endangered, many of their objections would no doubt be removed. If this could not be shown, their objections would have their full force. He wished it therefore to be well considered whether in case the states, as was proposed, should retain some portion of sovereignty at least, this portion could be preserved, without allowing them to participate effectually in the general government, without giving them each a distinct and equal vote for the purpose of defending themselves in the general councils.

Wilson: His respect for Dr. Johnson, added to the importance of the subject, led him to attempt, unprepared as he was, to solve the difficulty which had been started. It was asked how the general government and individuality of the particular states could be reconciled to each other; and how the latter could be secured against the former. Might it not, on the other side, be asked how the former was to be secured against the latter? It was generally admitted that a jealousy and rivalry would be felt between the general and particular governments. As the plan now stood, though indeed contrary to his opinion, one branch of the general government (the Senate or second branch) was to be appointed by the state legislatures. The state legislatures, therefore, by this participation in the general government would have an opportunity of defending their rights. Ought not a reciprocal opportunity to be given to the general government of defending itself by having an appointment of some one constituent branch of the state governments? If a security be necessary on one side, it would seem reasonable to demand it on the other. But taking the matter in a more general view, he saw no danger to the states from the general government. In case a combination should be made by the large ones, it would produce a general alarm among the

rest, and the project would be frustrated. But there was no temptation to such a project. The states having in general a similar interest, in case of any propositions in the national legislature to encroach on the state legislatures, he conceived a general alarm would take place in the national legislature itself, that it would communicate itself to the state legislatures, and would finally spread among the people at large. The general government will be as ready to preserve the rights of the states as the latter are to preserve the rights of individuals; all the members of the former having a common interest as representatives of all the people of the latter, to leave the state governments in possession of what the people wish them to retain. He could not discover, therefore, any danger whatever on the side from which it was apprehended. On the contrary, he conceived that in spite of every precaution the general government would be in perpetual danger of encroachments from the state governments.

Madison: Was of opinion, in the first place, that there was less danger of encroachment from the general government than from the state governments, and in the second place, that the mischief from encroachments would be less fatal if made by the former than if made by the latter. (1) All the examples of other confederacies prove the greater tendency in such systems to anarchy than to tyranny; to a disobedience of the members than usurpations of the federal head. Our own experience had fully illustrated this tendency.—But it will be said that the proposed change in the principles and form of the Union will vary the tendency; that the general government will have real and greater powers, and will be derived in one branch at least from the people, not from the governments of the states. To give full force to this objection, let it be supposed for a moment that indefinite power should be given to the general legislature, and the states reduced to corporations dependent on the general legislature; why should it follow that the general government would take from the states any branch of their power as far as its operation was beneficial, and its continuance desirable to the people? In some of the states,



particularly in Connecticut, all the townships are incorporated, and have a certain limited jurisdiction. Have the representatives of the people of the townships in the legislature of the state ever endeavored to despoil the townships of any part of their local authority? As far as this local authority is convenient to the people, they are attached to it; and their representatives chosen by and amenable to them naturally respect their attachment to this, as much as their attachment to any other right or interest. The relation of a general government to state governments is parallel. (2) Guards were more necessary against encroachments of the state governments on the general government than of the latter on the former. The great objection made against an abolition of the state governments was that the general government could not extend its care to all the minute objects which fall under the cognizance of the local jurisdictions. The objection as stated lay not against the probable abuse of the general power but against the imperfect use that could be made of it throughout so great an extent of country, and over so great a variety of objects. As far as its operation would be practicable, it could not in this view be improper; as far as it would be impracticable, the convenience of the general government itself would concur with that of the people in the maintenance of subordinate governments. Were it practicable for the general government to extend its care to every requisite object without the cooperation of the state governments, the people would not be less free as members of one great republic than as members of thirteen small ones. A citizen of Delaware was not more free than a citizen of Virginia: nor would either be more free than a citizen of America. Supposing therefore a tendency in the general government to absorb the state governments, no *fatal* consequence could result. Taking the reverse as the supposition, that a tendency should be left in the state governments towards an independence on the general government, and the gloomy consequences need not be pointed out. The imagination of them must have suggested to the states the experiment we are now making to prevent the calamity, and must have formed

the chief motive with those present to undertake the arduous task.

On the question for resolving "that the legislature ought to consist of two branches": Yeas 7 (Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia); nays 3 (New York, New Jersey, Delaware); divided 1 (Maryland).

**Agreement Referred to Committee of Detail.** Resolved, that the legislature consist of two branches. Second resolution on fundamentals. *July 26*

**Details in Convention.** The legislative power shall be vested in a Congress, to consist of two separate and distinct bodies of men, a House of Representatives and a Senate; each of which shall in all cases have a negative on the other. . . . Article III, Committee of Detail. *Aug. 6*

The enacting style of the laws of the United States shall be, "Be it enacted, and it is hereby enacted, by the House of Representatives, and by the Senate of the United States, in Congress assembled." Article VI, Section 11, Committee of Detail.

**Mason:** Doubted the propriety of giving each branch a negative on the other "in all cases." There were some cases in which it was, he supposed, not intended to be given, as in the case of balloting for appointments. *Aug. 7*

**G. Morris:** Moved to insert "legislative acts" instead of "all cases."

**Williamson:** Seconded the motion.

**Sherman:** This will restrain the operation of the clause too much.

It will particularly exclude a mutual negative in the case of ballots, which he hoped would take place.

**Gorham:** Contended that elections ought to be made by *joint ballot*. If separate ballots should be made for the President, and the two branches should be each attached to a favorite, great delay, contention and confusion may ensue. These inconveniences have been felt in Massachusetts in the election of officers of little importance compared with the executive of the United States. The only objection against a joint ballot is that it may

deprive the Senate of their due weight; but this ought not to prevail over the respect due to the public tranquillity and welfare.

Wilson: Was for a joint ballot in several cases at least; particularly in the choice of a President; and was therefore for the amendment. Disputes between the two houses, during and concerning the vacancy of the executive, might have dangerous consequences.

Mason: Thought the amendment of Mr. Gouverneur Morris extended too far. Treaties are in a subsequent part declared to be laws; they will therefore be subjected to a negative, although they are to be made, as proposed, by the Senate alone. He proposed that the mutual negative should be restrained to "cases requiring the distinct assent" of the two houses.

G. Morris: Thought this but a repetition of the same thing; the mutual negative and distinct assent being equivalent expressions. Treaties he thought were not laws.

Madison: Moved to strike out the words, "each of which shall in all cases have a negative on the other"; the idea being sufficiently expressed in the preceding member of the article, "vesting the legislative power" in "distinct bodies," especially as the respective powers, and mode of exercising them, were fully delineated in a subsequent article.

C. C. Pinckney: Seconded the motion.

On the question for inserting "legislative acts" as moved by G. Morris, it passed in the negative, the votes being equally divided: Yeas 5 (New Hampshire, Massachusetts, Connecticut, Pennsylvania, North Carolina); nays 5 (Delaware, Maryland, Virginia, South Carolina, Georgia).

On the question for agreeing to Madison's motion to strike out, etc.: Yeas 7 (New Hampshire, Massachusetts, Pennsylvania, Delaware, Virginia, South Carolina, Georgia); nays 3 (Connecticut, Maryland, North Carolina).

Aug. 15 Article VI, Section 11, was agreed to, *nem. con.*

Sept. 12 **Conclusions in Convention.** All legislative powers herein granted shall be vested in a Congress of the United States, which shall

consist of a Senate and House of Representatives. Article I, Section 1. Report of Committee on Style and Arrangement.

The enacting style of the laws shall be, "Be it enacted by the Senators and Representatives in Congress assembled." Article I, Section 7, paragraph 1. Report of Committee on Style and Arrangement.

The final draft of the Constitution, approved this day, included the following: All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives. Article I, Section 1. *Sept. 17*

CHAPTER 6  
THE HOUSE OF REPRESENTATIVES

ELECTION AND TERM OF MEMBERS

*May 29* Preliminaries in Committee of the Whole. Resolved, that the members of the first branch of the national legislature ought to be elected by the people of the several states every —— for the term of —— . . . . Proposition in Virginia Plan.

*May 31* Sherman: Opposed the election by the people, insisting that it ought to be by the state legislatures. The people, he said, immediately should have as little to do as may be about the government. They want information and are constantly liable to be misled.

Gerry: The evils we experience flow from the excess of democracy. The people do not want virtue, but are the dupes of pretended patriots. In Massachusetts it had been fully confirmed by experience that they are daily misled into the most baneful measures and opinions by the false reports circulated by designing men, and which no one on the spot can refute. One principal evil arises from the want of due provision for those employed in the administration of government. It would seem to be a maxim of democracy to starve the public servants. He mentioned the popular clamor in Massachusetts for the reduction of salaries, and the attack made on that of the governor, though secured by the spirit of the constitution itself. He had, he said, been too republican heretofore: he was still, however, republican; but had been taught by experience the danger of the leveling spirit.

Mason: Argued strongly for an election of the larger branch by the people. It was to be the grand depository of the democratic principle of the government. It was, so to speak, to be our House of Commons. It ought to know and sympathize with every part of the community; and ought therefore to be taken not only from different parts of the whole republic, but also from different districts of the larger members of it; which had in several instances, particularly in Virginia, different interests and views arising from difference of produce, of habits, etc., etc. He admitted that we had been too democratic, but was afraid we should incautiously run into the opposite extreme. We ought to attend to the rights of every class of the people. He had often wondered at the indifference of the superior classes of society to this dictate of humanity and policy; considering that, however affluent their circumstances or elevated their situations might be, the course of a few years not only might but certainly would distribute their posterity throughout the lowest classes of society. Every selfish motive, therefore, every family attachment, ought to recommend such a system of policy as would provide no less carefully for the rights and happiness of the lowest, than of the highest, order of citizens.

Wilson: Contended strenuously for drawing the most numerous branch of the legislature immediately from the people. He was for raising the federal pyramid to a considerable altitude, and for that reason wished to give it as broad a basis as possible. No government could long subsist without the confidence of the people. In a republican government, this confidence was peculiarly essential. He also thought it wrong to increase the weight of the state legislatures by making them the electors of the national legislature. All interference between the general and local governments should be obviated as much as possible. On examination it would be found that the opposition of states to federal measures had proceeded much more from the officers of the states than from the people at large.

Madison: Considered the popular election of one branch of the national legislature as essential to every plan of free govern-

ment. He observed that in some of the states, one branch of the legislature was composed of men already removed from the people by an intervening body of electors. That if the first branch of the general legislature should be elected by the state legislatures, the second branch elected by the first, the executive by the second together with the first, and other appointments again made for subordinate purposes by the executive, the people would be lost sight of altogether; and the necessary sympathy between them and their rulers and officers too little felt. He was an advocate for the policy of refining the popular appointments by successive filtrations, but thought it might be pushed too far. He wished the expedient to be resorted to only in the appointment of the second branch of the legislature, and in the executive and judiciary branches of the government. He thought, too, that the great fabric to be raised would be more stable and durable if it should rest on the solid foundation of the people themselves than if it should stand merely on the pillars of the legislatures.

Gerry: Did not like the election by the people. The maxims taken from the British constitution were often fallacious when applied to our situation, which was extremely different. Experience, he said, had shown that the state legislatures, drawn immediately from the people, did not always possess their confidence. He had no objection, however, to an election by the people, if it were so qualified that men of honor and character might not be unwilling to be joined in the appointments. He seemed to think the people might nominate a certain number, out of which the state legislatures should be bound to choose.

Butler: Thought an election by the people an impracticable mode.

On the question for an election of the first branch of the national legislature by the people: Yeas 6 (Massachusetts, New York, Pennsylvania, Virginia, North Carolina, Georgia); nays 2 (New Jersey, South Carolina); divided 2 (Connecticut, Delaware).

*June 6*

C. Pinckney: According to previous notice, and rule obtained, moved "that the first branch of the national legislature be

elected by the state legislatures, and not by the people"; contending that the people were less fit judges in such a case, and that the legislatures would be less likely to promote the adoption of the new government if they were to be excluded from all share in it.

Rutledge: Seconded the motion.

Gerry: Much depends on the mode of election. In England the people will probably lose their liberty from the smallness of the proportion having a right of suffrage. Our danger arises from the opposite extreme. Hence in Massachusetts the worst men got into the legislature. Several members of that body had lately been convicted of infamous crimes. Men of indigence, ignorance, and baseness, spare no pains, however dirty, to carry their point against men who are superior to the artifices practised. He was not disposed to run into extremes. He was as much principled as ever against aristocracy and monarchy. It was necessary, on the one hand, that the people should appoint one branch of the government, in order to inspire them with the necessary confidence; but he wished the election, on the other, to be so modified as to secure more effectually a just preference of merit. His idea was that the people should nominate certain persons, in certain districts, out of whom the state legislatures should make the appointment.

Wilson: He wished for vigor in the government, but he wished that vigorous authority to flow immediately from the legitimate source of all authority. The government ought to possess not only, first, the *force*, but second, the *mind or sense* of the people at large. The legislature ought to be the most exact transcript of the whole society. Representation is made necessary only because it is impossible for the people to act collectively. The opposition was to be expected, he said, from the *governments*, not from the citizens of the states. The latter had parted, as was observed by Mr. King, *with all the necessary powers*; and it was immaterial to them by whom they were exercised, if well exercised. The state officers were to be the losers of power. The people, he supposed, would be rather more attached to the national government than to the state



governments, as being more important in itself, and more flattering to their pride. There is no danger of improper elections, if made by *large* districts. Bad elections proceed from the smallness of the districts, which give an opportunity to bad men to intrigue themselves into office.

Sherman: If it were in view to abolish the state governments, the elections ought to be by the people. If the state governments are to be continued, it is necessary, in order to preserve harmony between the national and state governments, that the elections to the former should be made by the latter. The right of participating in the national government would be sufficiently secured to the people by their election of the state legislatures. The objects of the Union, he thought, were few—first, defense against foreign danger; secondly, against internal disputes, and a resort to force; thirdly, treaties with foreign nations; fourthly, regulating foreign commerce, and drawing revenue from it. These, and perhaps a few lesser objects, alone rendered a confederation of the states necessary. All other matters, civil and criminal, would be much better in the hands of the states. The people are more happy in small than in large states. States may, indeed, be too small, as Rhode Island, and thereby be too subject to faction. Some others were, perhaps, too large, the powers of government not being able to pervade them. He was for giving the general government power to legislate and execute within a defined province.

Mason: Under the existing Confederacy, Congress represent the *states*, and not the *people* of the states; their acts operate on the *states*, not on the *individuals*. The case will be changed in the new plan of government. The people will be represented; they ought therefore to choose the representatives. The requisites in actual representation are that the representatives should sympathize with their constituents; should think as they think, and feel as they feel; and that for these purposes they should be residents among them. Much, he said, had been alleged against democratic elections. He admitted that much might be said; but it was to be considered that no government

was free from imperfections and evils, and that improper elections in many instances were inseparable from republican governments. But compare these with the advantage of this form, in favor of the rights of the people, in favor of human nature! He was persuaded there was a better chance for proper elections by the people, if divided into large districts, than by the state legislatures. Paper money had been issued by the latter, when the former were against it. Was it to be supposed that the state legislatures, then, would not send to the national legislature patrons of such projects, if the choice depended on them?

Madison: Considered an election of one branch, at least, of the legislature by the people immediately, as a clear principle of free government; and that this mode, under proper regulations, had the additional advantage of securing better representatives, as well as of avoiding too great an agency of the state governments in the general one. He differed from the member from Connecticut (Mr. Sherman) in thinking the objects mentioned to be all the principal ones that required a national government. Those were certainly important and necessary objects; but he combined with them the necessity of providing more effectually for the security of private rights, and the steady dispensation of justice. Interferences with these were evils which had, more perhaps than anything else, produced this Convention. Was it to be supposed that republican liberty could long exist under the abuses of it practised in some of the states? The gentleman (Mr. Sherman) had admitted that in a very small state, faction and oppression would prevail. It was to be inferred, then, that wherever these prevailed the state was too small. Had they not prevailed in the largest as well as the smallest, though less than in the smallest? And were we not thence admonished to enlarge the sphere as far as the nature of the government would admit? This was the only defense against the inconveniences of democracy consistent with the democratic form of government. All civilized societies would be divided into different sects, factions, and interests, as they happened to consist of rich and poor, debtors and

creditors, the landed, the manufacturing, the commercial interests, the inhabitants of this district or that district, the followers of this political leader or that political leader, the disciples of this religious sect or that religious sect. In all cases where a majority are united by a common interest or passion, the rights of the minority are in danger. What motives are to restrain them? A prudent regard to the maxim that honesty is the best policy is found by experience to be as little regarded by bodies of men as by individuals. Respect for character is always diminished in proportion to the number among whom the blame or praise is to be divided. Conscience, the only remaining tie, is known to be inadequate in individuals; in large numbers, little is to be expected from it. Besides, religion itself may become a motive to persecution and oppression. These observations are verified by the histories of every country, ancient and modern. In Greece and Rome the rich and poor, the creditors and debtors, as well as the patricians and plebeians, alternately oppressed each other with equal unmercifulness. What a source of oppression was the relation between the parent cities of Rome, Athens, and Carthage, and their respective provinces: the former possessing the power and the latter being sufficiently distinguished to be separate objects of it? Why was America so justly apprehensive of parliamentary injustice? Because Great Britain had a separate interest, real or supposed, and, if her authority had been admitted, could have pursued that interest at our expense. We have seen the mere distinction of color made, in the most enlightened period of time, a ground of the most oppressive dominion ever exercised by man over man. What has been the source of those unjust laws complained of among ourselves? Has it not been the real or supposed interest of the major number? Debtors have defrauded their creditors. The landed interest has borne hard on the mercantile interest. The holders of one species of property have thrown a disproportion of taxes on the holders of another species. The lesson we are to draw from the whole is that where a majority are united by a common sentiment, and have an opportunity, the rights of the minor party be-

come insecure. In a republican government, the majority, if united, have always an opportunity. The only remedy is to enlarge the sphere and thereby divide the community into so great a number of interests and parties that, in the first place, a majority will not be likely, at the same moment, to have a common interest separate from that of the whole, or of the minority; and in the second place, that in case they should have such an interest, they may not be so apt to unite in the pursuit of it. It was incumbent on us, then, to try this remedy, and, with that view, to frame a republican system on such a scale and in such a form as will control all the evils which have been experienced.

Dickinson: Considered it essential that one branch of the legislature should be drawn immediately from the people; and expedient that the other should be chosen by the legislatures of the states. This combination of the state governments with the national government was as politic as it was unavoidable. In the formation of the Senate we ought to carry it through such a refining process as will assimilate it, as nearly as may be, to the House of Lords in England. He repeated his warm eulogiums on the British constitution. He was for a strong national government; but for leaving the states a considerable agency in the system. The objection against making the former dependent on the latter might be obviated by giving to the Senate an authority permanent and irrevocable for three, five, or seven years. Being thus independent, they will check and decide with uncommon freedom.

Read: Too much attachment is betrayed to the state governments. We must look beyond their continuance. A national government must soon of necessity swallow them all up. They will soon be reduced to the mere office of electing the national Senate. He was against patching up the old federal system: he hoped the idea would be dismissed. It would be like putting new cloth on an old garment. The Confederation was founded on temporary principles. It cannot last: it cannot be amended. If we do not establish a good government on new principles, we must either go to ruin or have the work to do over again.

The people at large are wrongly suspected of being averse to a general government. The aversion lies among interested men who possess their confidence.

Pierce: Was for an election by the people as to the first branch; and by the states as to the second branch; by which means the citizens of the states would be represented both *individually* and *collectively*.

C. C. Pinckney: Wished to have a good national government and at the same time to leave a considerable share of power in the states. An election of either branch by the people, scattered as they are in many states, particularly in South Carolina, was totally impracticable. He differed from gentlemen who thought that a choice by the people would be a better guard against bad measures than by the legislatures. A majority of the people in South Carolina were notoriously for paper money as a legal tender; the legislature had refused to make it a legal tender. The reason was that the latter had some sense of character and were restrained by that consideration. The state legislatures, also, he said, would be more jealous, and more ready to thwart the national government, if excluded from a participation in it. The idea of abolishing these legislatures would never go down.

Wilson: Would not have spoken again but for what had fallen from Mr. Read; namely, that the idea of preserving the state governments ought to be abandoned. He saw no incompatibility between the national and state governments, provided the latter was restrained to certain local purposes; nor any probability of their being devoured by the former. In all confederated systems, ancient and modern, the reverse had happened; the generality being destroyed gradually by the usurpations of the parts composing it.

On the question for electing the first branch by the state legislatures as moved by C. Pinckney: Yeas 3 (Connecticut, New Jersey, South Carolina); nays 8 (Massachusetts, New York, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Georgia).

*June 12*

Sherman and Ellsworth: Moved to fill the blank left in the fourth resolution, for the periods of electing the members of the first branch, with the words "every year"; Sherman observing that he did it in order to bring on some question.

Rutledge: Proposed "every two years."

Jenifer: Proposed "every three years"; observing that the too great frequency of elections rendered the people indifferent to them, and made the best men unwilling to engage in so precarious a service.

Madison: Seconded the motion for three years. Instability is one of the great vices of our republics to be remedied. Three years will be necessary, in a government so extensive, for members to form any knowledge of the various interests of the states to which they do not belong, and of which they can know but little from the situation and affairs of their own. One year will be almost consumed in preparing for and traveling to and from the seat of national business.

Gerry: The people of New England will never give up the point of annual elections. They know of the transition made in England from triennial to septennial elections, and will consider such an innovation here as the prelude to a like usurpation. He considered annual elections as the only defense of the people against tyranny. He was as much against a triennial house as against a hereditary executive.

Madison: Observed that if the opinions of the people were to be our guide, it would be difficult to say what course we ought to take. No member of the Convention could say what the opinions of his constituents were at this time; much less could he say what they would think, if possessed of the information and lights possessed by the members here; and still less, what would be their way of thinking six or twelve months hence. We ought to consider what was right and necessary in itself for the attainment of a proper government. A plan adjusted to this idea will recommend itself. The respectability of this Convention will give weight to their recommendation of it. Experience will be constantly urging the adoption of it; and all the most

enlightened and respectable citizens will be its advocates. Should we fall short of the necessary and proper point, this influential class of citizens will be turned against the plan, and little support in opposition to them can be gained to it from the unreflecting multitude.

Gerry: Repeated his opinion that it was necessary to consider what the people would approve. This had been the policy of all legislators. If the reasoning (of Mr. Madison) were just, and we supposed a limited monarchy the best form in itself, we ought to recommend it, though the genius of the people was decidedly adverse to it, and, having no hereditary distinctions among us, we were destitute of the essential materials for such an innovation.

On the question for the triennial election of the first branch: Yeas 7 (New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, Georgia); nays 4 (Massachusetts, Connecticut, North Carolina, South Carolina).

*June 19* **Fundamentals in Convention.** Resolved, that the members of the first branch of the national legislature ought to be elected by the people of the several states for the term of three years. . . . Third resolution, Committee of the Whole.

*June 21* C. C. Pinckney: Moved "that the first branch, instead of being elected by the people, should be elected in such manner as the legislature of each state should direct." He urged, first, that this liberty would give more satisfaction, as the legislatures could then accommodate the mode to the convenience and opinions of the people; secondly, that it would avoid the undue influence of large counties, which would prevail if the elections were to be made in districts, as must be the mode intended by the report of the Committee; thirdly, that otherwise disputed elections must be referred to the general legislature, which would be attended with intolerable expense and trouble to the distant parts of the republic.

L. Martin: Seconded the motion.

Hamilton: Considered the motion as intended manifestly to transfer the election from the people to the state legislatures,

which would essentially vitiate the plan. It would increase that state influence which could not be too watchfully guarded against. All, too, must admit the possibility, in case the general government should maintain itself, that the state governments might gradually dwindle into nothing. The system, therefore, should not be engrafted on what might possibly fail.

Mason: Urged the necessity of retaining the election by the people. Whatever inconvenience may attend the democratic principle, it must actuate one part of the government. It is the only security for the rights of the people.

Sherman: Would like an election by the legislatures best, but is content with the plan as it stands.

Rutledge: Could not admit the solidity of the distinction between a mediate and immediate election by the people. It was the same thing to act by one's self, and to act by another. An election by the legislature would be more refined than an election immediately by the people; and would be more likely to correspond with the sense of the whole community. If this Convention had been chosen by the people in districts, it is not to be supposed that such proper characters would have been preferred. The delegates to Congress, he thought, had also been fitter men than would have been appointed by the people at large.

Wilson: Considered the election of the first branch by the people not only as the cornerstone, but as the foundation of the fabric; and that the difference between a mediate and immediate election was immense. The difference was particularly worthy of notice in this respect, that the legislatures are actuated not merely by the sentiment of the people, but have an official sentiment opposed to that of the general government, and perhaps to that of the people themselves.

King: Enlarged on the same distinction. He supposed the legislatures would constantly choose men subservient to their own views, as contrasted to the general interest, and that they might even devise modes of election that would be subversive of the end in view. He remarked several instances in which the views of a state might be at variance with those of the general govern-



ment, and mentioned particularly a competition between the national and state debts, for the most certain and productive funds.

C. C. Pinckney: Was for making the state governments a part of the general system. If they were to be abolished, or lose their agency, South Carolina and the other states would have but a small share of the benefits of government.

On the question for C. C. Pinckney's motion, to substitute "election to the first branch in such mode as the legislatures should appoint" instead of its being "elected by the people": Yeas 4 (Connecticut, New Jersey, Delaware, South Carolina); nays 6 (Massachusetts, New York, Pennsylvania, Virginia, North Carolina, Georgia); divided 1 (Maryland).

C. C. Pinckney: Then moved "that the first branch be elected *by the people* in such mode as the legislatures should direct," but waived it on its being hinted that such a provision might be more properly tried in the detail of the plan.

On the question for the election of the first branch "by the people": Yeas 9 (Massachusetts, Connecticut, New York, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia); nays 1 (New Jersey); divided 1 (Maryland).

The election of the first branch "for the term of three years" being considered:

Randolph: Moved to strike out "three years" and insert "two years." He was sensible that annual elections were a source of great mischiefs in the states, yet it was the want of such checks against the popular intemperance as were now proposed that rendered them so mischievous. He would have preferred annual to biennial but for the extent of the United States and the inconvenience which would result from them to the representatives of the extreme parts of the empire. The people were attached to frequency of elections. All the constitutions of the states, except that of South Carolina, had established annual elections.

Dickinson: The idea of annual elections was borrowed from the ancient usage of England, a country much less extensive than ours. He supposed biennial would be inconvenient. He pre-

ferred triennial; and in order to prevent the inconvenience of an entire change of the whole number at the same moment, suggested a rotation by an annual election of one-third.

Ellsworth: Was opposed to three years, supposing that even one year was preferable to two years. The people were fond of frequent elections, and might be safely indulged in one branch of the legislature. He moved for "one year."

Strong: Seconded and supported the motion.

Wilson: Being for making the first branch an effectual representation of the people at large, preferred an annual election of it. This frequency was most familiar and pleasing to the people. It would not be more inconvenient to them than triennial elections, as the people in all the states have annual meetings with which the election of the national representatives might be made to coincide. He did not conceive that it would be necessary for the national legislature to sit constantly, perhaps not half, perhaps not one-fourth of the year.

Madison: Was persuaded that annual elections would be extremely inconvenient, and apprehensive that biennial would be too much so; he did not mean inconvenient to the electors but to the representatives. They would have to travel seven or eight hundred miles from the distant parts of the Union; and would probably not be allowed even a reimbursement of their expenses. Besides, none of those who wished to be re-elected would remain at the seat of government, confiding that their absence would not affect them. The members of Congress had done this with few instances of disappointment. But as the choice was here to be made by the people themselves, who would be much less complaisant to individuals, and much more susceptible of impressions from the presence of a rival candidate, it must be supposed that the members from the most distant states would travel backwards and forwards at least as often as the elections should be repeated. Much was to be said also on the time requisite for new members, who would always form a large proportion, to acquire that knowledge of the affairs of the states in general, without which their trust could not be usefully discharged.

Sherman: Preferred annual elections, but would be content with biennial. He thought the representatives ought to return home and mix with the people. By remaining at the seat of government, they would acquire the habits of the place, which might differ from those of their constituents.

Mason: Observed that, the states being differently situated, such a rule ought to be formed as would put them as nearly as possible on a level. If elections were annual, the middle states would have a great advantage over the extreme ones. He wished them to be biennial, and the rather as in that case they would coincide with the periodical elections of South Carolina, as well of the other states.

Hamilton: Urged the necessity of three years. There ought to be neither too much nor too little dependence on the popular sentiments. The checks in the other branches of the government would be but feeble, and would need every auxiliary principle that could be interwoven. The British House of Commons were elected septennially, yet the democratic spirit of the constitution had not ceased. Frequency of elections tended to make the people listless to them; and to facilitate the success of little cabals. This evil was complained of in all the states. In Virginia it had been lately found necessary to force the attendance and voting of the people by severe regulations.

On the question for striking out "three years": Yeas 7 (Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia); nays 3 (New York, Delaware, Maryland); divided 1 (New Jersey).

The motion for "two years" was then inserted, *nem. con.*

*July 26*     **Agreement Referred to Committee of Detail.** Resolved, that the members of the first branch of the legislature ought to be elected by the people of the several states for the term of two years. . . . Third resolution on fundamentals.

*Aug. 6*     **Details in Convention.** The members of the House of Representatives shall be chosen every second year, by the people of the several states comprehended within this Union. The

qualifications of the electors shall be the same from time to time as those of the electors in the several states, of the most numerous branch of their own legislatures. Article IV, Section 1, Committee of Detail.

G. Morris: Moved to strike out the last member of the section, beginning with the words "qualifications of electors," in order that some other provision might be substituted which would restrain the right of suffrage to freeholders. *Aug. 7*

Fitzsimons: Seconded the motion.

Williamson: Was opposed to it.

Wilson: This part of the report was well considered by the Committee and he did not think it could be changed for the better. It was difficult to form any uniform rule of qualifications for all the states. Unnecessary innovations, he thought, too, should be avoided. It would be very hard and disagreeable for the same persons, at the same time, to vote for representatives in the state legislature, and to be excluded from a vote for those in the national legislature.

G. Morris: Such a hardship would be neither great nor novel. The people are accustomed to it and not dissatisfied with it in several of the states. In some, the qualifications are different for the choice of the governor and of the representatives; in others, for different houses of the legislature. Another objection against the clause as it stands is that it makes the qualifications of the national legislature depend on the will of the states, which he thought not proper.

Ellsworth: Thought the qualifications of the electors stood on the most proper footing. The right of suffrage was a tender point, and strongly guarded by most of the state constitutions. The people will not readily subscribe to the national Constitution if it should subject them to be disfranchised. The states are the best judges of the circumstances and temper of their own people.

Mason: The force of habit is certainly not attended to by those gentlemen who wish for innovations on this point. Eight or nine states have extended the right of suffrage beyond the freeholders. What will the people there say if they should be dis-

franchised? A power to alter the qualifications would be a dangerous power in the hands of the legislature.

Butler: There is no right of which the people are more jealous than that of suffrage. Abridgments of it tend to the same revolution as in Holland, where they have at length thrown all power into the hands of the senates, who fill up vacancies themselves, and form a rank aristocracy.

Dickinson: Had a very different idea of the tendency of vesting the right of suffrage in the freeholders of the country. He considered them as the best guardians of liberty; and the restriction of the right to them as a necessary defense against the dangerous influence of those multitudes without property and without principle, with which our country, like all others, will in time abound. As to the unpopularity of the innovation, it was, in his opinion, chimerical. The great mass of our citizens is composed at this time of freeholders, and will be pleased with it.

Ellsworth: How shall the freehold be defined? Ought not every man who pays a tax, to vote for the representative who is to levy and dispose of his money? Shall the wealthy merchants and manufacturers, who will bear a full share of the public burdens, be not allowed a voice in the imposition of them? Taxation and representation ought to go together.

G. Morris: He had long learned not to be the dupe of words. The sound of aristocracy, therefore, had no effect upon him. It was the thing, not the name, to which he was opposed; and one of his principal objections to the Constitution, as it is now before us, is that it threatens the country with an aristocracy. The aristocracy will grow out of the House of Representatives. Give the votes to people who have no property and they will sell them to the rich, who will be able to buy them. We should not confine our attention to the present moment. The time is not distant when this country will abound with mechanics and manufacturers, who will receive their bread from their employers. Will such men be the secure and faithful guardians of liberty? Will they be the impregnable barrier against aristocracy? He was as little duped by the association of the words,

"taxation and representation." The man who does not give his vote freely is not represented. It is the man who dictates the vote. Children do not vote. Why? Because they want prudence; because they have no will of their own. The ignorant and the dependent can be as little trusted with the public interest. He did not conceive the difficulty of defining "freeholders" to be insuperable. Still less that the restriction could be unpopular. Nine-tenths of the people are at present freeholders, and these will certainly be pleased with it. As to merchants, etc., if they have wealth, and value the right, they can acquire it. If not, they don't deserve it.

Mason: We all feel too strongly the remains of ancient prejudices, and view things too much through a British medium. A freehold is the qualification in England, and hence it is imagined to be the only proper one. The true idea, in his opinion, was that every man having evidence of attachment to, and permanent common interest with, the society, ought to share in all its rights and privileges. Was this qualification restrained to freeholders? Does no other kind of property but land evidence a common interest in the proprietor? Does nothing besides property mark a permanent attachment? Ought the merchant, the monied man, the parent of a number of children whose fortunes are to be pursued in his own country, to be viewed as suspicious characters, and unworthy to be trusted with the common rights of their fellow citizens?

Madison: The right of suffrage is certainly one of the fundamental articles of republican government, and ought not to be left to be regulated by the legislature. A gradual abridgment of this right has been the mode in which aristocracies have been built on the ruins of popular forms. Whether the constitutional qualification ought to be a freehold, would with him depend much on the probable reception such a change would meet with in the states, where the right was now exercised by every description of people. In several of the states, a freehold was now the qualification. Viewing the subject in its merits alone, the freeholders of the country would be the safest depositories of republican liberty. In future times, a

great majority of the people will not only be without landed but any other sort of property. These will either combine, under the influence of their common situation—in which case the rights of property and the public liberty will not be secure in their hands—or, what is more probable, they will become the tools of opulence and ambition; in which case there will be equal danger on another side. The example of England has been misconceived (by Col. Mason). A very small proportion of the representatives are there chosen by freeholders. The greatest part are chosen by the cities and boroughs, in many of which the qualification of suffrage is as low as it is in any one of the United States; and it was in the boroughs and cities, rather than the counties, that bribery most prevailed, and the influence of the Crown on elections was most dangerously exerted.

Franklin: It is of great consequence that we should not depress the virtue and public spirit of our common people; of which they displayed a great deal during the war, and which contributed principally to the favorable issue of it. He related the honorable refusal of the American seamen, who were carried in great numbers into the British prisons during the war to redeem themselves from misery, or to seek their fortunes, by entering on board the ships of the enemies to their country; contrasting their patriotism with a contemporary instance, in which the British seamen made prisoners by the Americans readily entered on the ships of the latter, on being promised a share of the prizes that might be made out of their own country. This proceeded, he said, from the different manner in which the common people were treated in America and Great Britain. He did not think that the elected had any right, in any case, to narrow the privileges of the electors. He quoted as arbitrary the British statute setting forth the danger of tumultuous meetings, and, under that pretext, narrowing the right of suffrage to persons having freeholds of a certain value; observing that this statute was soon followed by another, under the succeeding parliament, subjecting the people who had no votes to peculiar labors and hardships. He was

persuaded also that such a restriction as was proposed would give great uneasiness in the populous states. The sons of a substantial farmer, not being themselves freeholders, would not be pleased at being disfranchised, and there are a great many persons of that description.

Mercer: The Constitution is objectionable in many points, but in none more than the present. He objected to the footing on which the qualification was put, but particularly to the *mode of election* by the people. The people cannot know and judge of the characters of candidates. The worst possible choice will be made. He quoted the case of the senate in Virginia as an example in point. The people in towns can unite their votes in favor of one favorite; and by that means always prevail over the people of the country, who being dispersed will scatter their votes among a variety of candidates.

Rutledge: Thought the idea of restraining the right of suffrage to the freeholders a very unadvised one. It would create division among the people, and make enemies of all those who should be excluded.

On the question for striking out, as moved by G. Morris, from the word "qualifications" to the end of the section: Yeas 1 (Delaware); nays 7 (New Hampshire, Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, South Carolina); divided 1 (Maryland); Georgia absent.

Mercer: Expressed his dislike of the whole plan and his opinion that it never could succeed. Aug. 8

Gorham: He had never seen any inconvenience from allowing such as were not freeholders to vote, though it had long been tried. The elections in Philadelphia, New York, and Boston, where the merchants and mechanics vote, are at least as good as those made by freeholders only. The case in England was not accurately stated yesterday (by Mr. Madison). The cities and large towns are not the seat of Crown influence and corruption. These prevail in the boroughs, and not on account of the right which those who are not freeholders have to vote, but of the smallness of the number who vote. The people have been long accustomed to this right in various parts of America,



and will never allow it to be abridged. We must consult their rooted prejudices if we expect their concurrence in our propositions.

Mercer: Did not object so much to an election by the people at large, including such as were not freeholders, as to their being left to make their choice without any guidance. He hinted that candidates ought to be nominated by the state legislatures.

On the question for agreeing to Article IV, Section 1, it passed, *nem. con.*

*Sept. 12*    **Conclusions in Convention.** The House of Representatives shall be composed of members chosen every second year, by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature. Article I, Section 2. Report of Committee on Style and Arrangement.

*Sept. 17*    The above provision recommended by the Committee on Style and Arrangement became Article I, Section 2, paragraph 1, of the completed Constitution.

### QUALIFICATIONS OF MEMBERS

#### AGE, CITIZENSHIP, AND "INHABITANCY" QUALIFICATIONS

*May 29*    **Preliminaries in Committee of the Whole.** Resolved, that the members of the first branch of the national legislature ought . . . to be of the age of ——— years at least. . . . Proposition in Virginia Plan.

*June 12*    The words requiring members of the first branch to be of the age of ——— years were struck out, Maryland alone no.

*June 22*    **Fundamentals in Convention.** Mason: Moved to insert "twenty-five years of age as a qualification for the members of the first branch." He thought it absurd that a man today should not be permitted by the law to make a bargain for himself, and tomorrow should be authorized to manage the affairs of a great nation. It was the more extraordinary, as every man carried with him, in his own experience, a scale for measuring the de-

ficiency of young politicians; since he would, if interrogated, be obliged to declare that his political opinions at the age of twenty-one were too crude and erroneous to merit an influence on public measures. It had been said that Congress had proved a good school for our young men. It might be so, for any thing he knew; but if it were, he chose that they should bear the expense of their own education.

Wilson: Was against abridging the rights of election in any shape. It was the same thing whether this were done by disqualifying the objects of choice, or the persons choosing. The motion tended to damp the efforts of genius and of laudable ambition. There was no more reason for incapacitating *youth* than *age*, where the requisite qualifications were found. Many instances might be mentioned of signal services rendered in high stations to the public before the age of twenty-five. The present Mr. Pitt and Lord Bolingbroke were striking instances. On the question for inserting "twenty-five years of age": Yeas 7 (Connecticut, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina); nays 3 (Massachusetts, Pennsylvania, Georgia); divided 1 (New York).

**Agreement Referred to Committee of Detail.** Resolved, that the members of the first branch of the legislature ought . . . to be of the age of twenty-five years at least. . . . Third resolution on fundamentals. July 26

**Details in Convention.** Every member of the House of Representatives shall be of the age of twenty-five years at least; shall have been a citizen in the United States for at least three years before his election; and shall be, at the time of his election, a resident of the state in which he shall be chosen. Article IV, Section 2, Committee of Detail. Aug. 6

Mason: Was for opening a wide door for emigrants; but did not choose to let foreigners and adventurers make laws for us and govern us. Citizenship for three years was not enough for ensuring that local knowledge which ought to be possessed by the representative. This was the principal ground of his objection to so short a term. It might also happen that a rich Aug. 8

foreign nation, for example Great Britain, might send over her tools, who might bribe their way into the legislature for insidious purposes. He moved that "seven" years instead of "three" be inserted.

G. Morris: Seconded the motion; and on the question, all the states agreed to it except Connecticut.

Sherman: Moved to strike out the word "resident" and insert "inhabitant," as less liable to misconstruction.

Madison: Seconded the motion. Both were vague, but the latter least so in common acceptation, and would not exclude persons absent occasionally for a considerable time on public or private business. Great disputes had been raised in Virginia concerning the meaning of residence as a qualification of representatives, which were determined more according to the affection or dislike to the man in question than to any fixed interpretation of the word.

Wilson: Preferred "inhabitant."

G. Morris: Was opposed to both, and for requiring nothing more than a freehold. He quoted great disputes in New York occasioned by these terms, which were decided by the arbitrary will of the majority. Such a regulation is not necessary. People rarely choose a non-resident. It is improper, as in the first branch *the people at large*, not the *states*, are represented.

Rutledge: Urged and moved that a residence of seven years should be required in the state wherein the member should be elected. An emigrant from New England to South Carolina or Georgia would know little of its affairs, and could not be supposed to acquire a thorough knowledge in less time.

Read: Reminded him that we were now forming a *national government*, and such a regulation would correspond little with the idea that we were one people.

Wilson: Enforced the same consideration.

Madison: Suggested the case of new states in the west, which could have, perhaps, no representation on that plan.

Mercer: Such a regulation would present a greater alienship than existed under the old federal system. It would interweave local prejudices and state distinctions in the very Constitution

which is meant to cure them. He mentioned instances of violent disputes raised in Maryland concerning the term "residence."

Ellsworth: Thought seven years of residence was by far too long a term; but that some fixed term of previous residence would be proper. He thought one year would be sufficient, but seemed to have no objection to three years.

Dickinson: Proposed that it should read "inhabitant actually resident for —— years." This would render the meaning less indeterminate.

Wilson: If a short term should be inserted in the blank, so strict an expression might be construed to exclude the members of the legislature, who could not be said to be actual residents in their states, whilst at the seat of the general government.

Mercer: It would certainly exclude men who had once been inhabitants, and returning from residence elsewhere to resettle in their original state, although a want of the necessary knowledge could not in such cases be presumed.

Mason: Thought seven years too long, but would never agree to part with the principle. It is a valuable principle. He thought it a defect in the plan that the representatives would be too few to bring with them all the local knowledge necessary. If residence be not required, rich men of neighboring states may employ with success the means of corruption in some particular district, and thereby get into the public councils after having failed in their own states. This is the practice in the boroughs of England.

On the question for postponing in order to consider Dickinson's motion: Yeas 3 (Maryland, South Carolina, Georgia); nays 8 (New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina).

On the question for inserting "inhabitant" in place of "resident": Agreed to, *nem. con.*

Ellsworth and Mason: Moved to insert "one year" for previous inhabitancy.

Williamson: Liked the report as it stood. He thought "resident" a good enough term. He was against requiring any period of

previous residence. New residents, if elected, will be most zealous to conform to the will of their constituents, as their conduct will be watched with a more jealous eye.

Butler and Rutledge: Moved "three years" instead of "one year" for previous inhabitancy.

On the question for "three years": Yeas 2 (South Carolina, Georgia); nays 9 (New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina).

On the question for "one year": Yeas 4 (New Jersey, North Carolina, South Carolina, Georgia); nays 6 (New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Virginia); divided 1 (Maryland).

Article IV, Section 2, as amended in manner preceding, was agreed to, *nem. con.*

*Aug. 10* On motion of Wilson to reconsider Article IV, Section 2, so as to restore "three" in place of "seven" years of citizenship, as a qualification for being elected into the House of Representatives: Yeas 6 (Connecticut, Pennsylvania, Delaware, Maryland, Virginia, North Carolina); nays 5 (New Hampshire, Massachusetts, New Jersey, South Carolina, Georgia).

*Aug. 13* Wilson and Randolph: Moved to strike out "seven years" and insert "four years" as the requisite term of citizenship to qualify for the House of Representatives. Wilson said it was very proper the electors should govern themselves by this consideration; but unnecessary and improper that the Constitution should chain them down to it.

Gerry: Wished that in future the eligibility might be confined to natives. Foreign powers will intermeddle in our affairs and spare no expense to influence them. Persons having foreign attachments will be sent among us and insinuated into our councils, in order to be made instruments for their purposes. Every one knows the vast sums laid out in Europe for secret services. He was not singular in these ideas. A great many of the most influential men in Massachusetts reasoned in the same manner.

Williamson: Moved to insert "nine years" instead of "seven."

He wished this country to acquire as fast as possible national habits. Wealthy emigrants do more harm by their luxurious examples than good by the money they bring with them.

Hamilton: Was in general against embarrassing the government with minute restrictions. There was, on one side, the possible danger that had been suggested. On the other side, the advantage of encouraging foreigners was obvious and admitted. Persons in Europe of moderate fortunes will be fond of coming here, where they will be on a level with the first citizens. He moved that the section be so altered as to require merely "citizenship and inhabitancy." The right of determining the rule of naturalization will then leave a discretion to the legislature on this subject, which will answer every purpose.

Madison: Seconded the motion. He wished to maintain the character of liberality which had been professed in all the constitutions and publications of America. He wished to invite foreigners of merit and republican principles among us. America was indebted to emigration for her settlement and prosperity. That part of America which had encouraged them most had advanced most rapidly in population, agriculture, and the arts. There was a possible danger, he admitted, that men with foreign predilections might obtain appointments; but it was by no means probable that it would happen in any dangerous degree. For the same reason that they would be attached to their native country, our own people would prefer natives of this country to them. Experience proved this to be the case. Instances were rare of a foreigner being elected by the people within any short space after his coming among us. If bribery was to be practised by foreign powers, it would not be attempted among the electors, but among the elected, and among natives having full confidence of the people, not among strangers who would be regarded with a jealous eye.

Wilson: Cited Pennsylvania as a proof of the advantage of encouraging emigrations. It was perhaps the youngest settlement (except Georgia) on the Atlantic, yet it was at least among the foremost in population and prosperity. He remarked that al-

most all the general officers of the Pennsylvania line of the late army were foreigners; and no complaint had ever been made against their fidelity or merit. Three of her deputies to the Convention (Mr. R. Morris, Mr. Fitzsimons, and himself) were also not natives. He had no objection to Col. Hamilton's motion, and would withdraw the one made by himself.

Butler: Was strenuous against admitting foreigners into our public councils.

On the question to require merely "citizenship and inhabitancy": Yeas 4 (Connecticut, Pennsylvania, Maryland, Virginia); nays 7 (New Hampshire, Massachusetts, New Jersey, Delaware, North Carolina, South Carolina, Georgia).

On the question to insert "nine years" instead of "seven": Yeas 3 (New Hampshire, South Carolina, Georgia); nays 8 (Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina).

Wilson: Renewed the motion for "four" years instead of "seven"; and on the question: Yeas 3 (Connecticut, Maryland, Virginia); nays 8 (New Hampshire, Massachusetts, New Jersey, Pennsylvania, Delaware, North Carolina, South Carolina, Georgia).

G. Morris: Moved to add to the end of the section (Article IV, Section 2) a proviso that the limitation of seven years should not affect the rights of any person now a citizen.

Mercer: Seconded the motion. It was necessary, he said, to prevent a disfranchisement of persons who had become citizens, under the faith and according to the laws and Constitution, from their actual level in all respects with natives.

Rutledge: It might as well be said that all qualifications are disfranchisements, and that to require the age of twenty-five years was a disfranchisement. The policy of the precaution was as great with regard to foreigners now citizens as to those who are to be naturalized in future.

Sherman: The United States have not invited foreigners, nor pledged their faith that they should enjoy equal privileges with native citizens. The individual states alone have done

this. The former, therefore, are at liberty to make any discriminations they may judge requisite.

Gorham: When foreigners are naturalized, it would seem as if they stand on an equal footing with natives. He doubted, then, the propriety of giving a retrospective force to the restriction.

Madison: Animadverted on the peculiarity of the doctrine of Mr. Sherman. It was subtilty by which every national engagement might be evaded. By parity of reason, whenever our public debts or foreign treaties become inconvenient, nothing more would be necessary to relieve us from them than to remodel the Constitution. It was said that the *United States*, as such, have not pledged their faith to the naturalized foreigners, and therefore are not bound. Be it so, and that the states alone are bound. Who are to form the new Constitution by which the condition of that class of citizens is to be made worse than the other class? Are not the states the agents? Will they not be the members of it? Did they not appoint this Convention? Are not they to ratify its proceedings? Will not the new Constitution be their act? If the new Constitution, then, violates the faith pledged to any description of people, will not the makers of it, will not the states, be the violators? To justify the doctrine, it must be said that the states can get rid of the obligation by revising the Constitution, though they could not do it by repealing the law under which foreigners held their privileges. He considered this a matter of real importance. It would expose us to the reproaches of all those who should be affected by it, reproaches which would soon be echoed from the other side of the Atlantic, and would unnecessarily enlist among the adversaries of the reform a very considerable body of citizens. We should moreover reduce every state to the dilemma of rejecting it, or of violating the faith pledged to a part of its citizens.

G. Morris: Considered the case of persons under twenty-five years of age as very different from that of foreigners. No faith could be pleaded by the former in bar of the regulation. No assurance had ever been given that persons under that age



should be in all cases on a level with those above it. But with regard to foreigners among us, the faith had been pledged that they should enjoy the privileges of citizens. If the restriction as to age had been confined to natives, and had left foreigners under twenty-five years of age eligible in this case, the discrimination would have been an equal injustice on the other side.

C. Pinckney: Remarked that the laws of the states had varied much the terms of naturalization in different parts of America, and contended that the United States could not be bound to respect them on such an occasion as the present. It was a sort of recurrence to first principles.

Mason: Was struck, not, like Mr. Madison, with the *peculiarity*, but the *propriety*, of the doctrine of Mr. Sherman. The states have formed different qualifications themselves for enjoying different rights of citizenship. Greater caution would be necessary in the outset of the government than afterwards. All the great objects would then be provided for. Every thing would be then set in motion. If persons among us attached to Great Britain should work themselves into our councils, a turn might be given to our affairs, and particularly to our commercial regulations, which might have pernicious consequences. The great houses of British merchants would spare no pains to insinuate the instruments of their views into the government.

Wilson: Read the clause in the constitution of Pennsylvania giving to foreigners, after two years' residence, all the rights whatsoever of citizens; combined it with the Article of Confederation making the citizens of one state citizens of all, inferred the obligation Pennsylvania was under to maintain the faith thus pledged to her citizens of foreign birth, and the just complaint which her failure would authorize. He observed, likewise, that the princes and states of Europe would avail themselves of such breach of faith, to deter their subjects from emigrating to the United States.

Mercer: Enforced the same idea of a breach of faith.

Baldwin: Could not enter into the force of the arguments against

extending the disqualification to foreigners now citizens. The discrimination of the place of birth was not more objectionable than that of age, which all had concurred in the propriety of.

On the question on the proviso of G. Morris in favor of foreigners now citizens: Yeas 5 (Connecticut, New Jersey, Pennsylvania, Maryland, Virginia); nays 6 (New Hampshire, Massachusetts, Delaware, North Carolina, South Carolina, Georgia).

Carroll: Moved to insert "five" years instead of "seven" in Article IV, Section 2: Yeas 3 (Connecticut, Maryland, Virginia); nays 7 (New Hampshire, Massachusetts, New Jersey, Delaware, North Carolina, South Carolina, Georgia); divided 1 (Pennsylvania).

Article IV, Section 2, as formerly amended, was then agreed to, *nem. con.*

**Conclusions in Convention.** No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen. Article I, Section 2, paragraph 2. Report of Committee on Style and Arrangement.

*Sept. 12*

The completed Constitution, approved this day, included the provision recommended by the Committee on Style and Arrangement.

*Sept. 17*

#### PROPERTY QUALIFICATIONS

**Fundamentals in Convention.** Mason: Moved "that the Committee of Detail be instructed to receive a clause requiring certain qualifications of landed property, and citizenship of the United States, in members of the national legislature; and disqualifying persons having unsettled accounts with, or being indebted to, the United States, from being members of the national legislature." He observed that persons of the latter descriptions had frequently got into the state legislatures, in order to promote laws that might shelter their de-

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linquencies, and that this evil had crept into Congress, if report was to be regarded.

C. Pinckney: Seconded the motion.

G. Morris: If qualifications are proper, he would prefer them in the electors rather than the elected. As to debtors of the United States, they are but few. As to persons having unsettled accounts, he believed them to be pretty many. He thought, however, that such a discrimination to be both odious and useless, and in many instances, unjust and cruel. The delay of settlement had been more the fault of the public than of the individuals. What will be done with those patriotic citizens who have lent money or services or property to their country, without having been yet able to obtain a liquidation of their claims? Are they to be excluded?

Gorham: Was for leaving to the legislature the providing against such abuses as had been mentioned.

Mason: Mentioned the parliamentary qualifications adopted in the reign of Queen Anne, which he said had met with universal approbation.

Madison: Had witnessed the zeal of men having accounts with the public, to get into the legislatures for sinister purposes. He thought, however, that if any precaution were taken for excluding them, the one proposed by Col. Mason ought to be remodeled. It might be well to limit the exclusion to persons who had received money from the public, and had not accounted for it.

G. Morris: It was a precept of great antiquity, as well as of high authority, that we should not be righteous overmuch. He thought we ought to be equally on our guard against being wise overmuch. The proposed regulation would enable the government to exclude particular persons from office as long as they pleased. He mentioned the case of the Commander-in-Chief's presenting his account for secret services, which, he said, was so moderate that every one was astonished at it; and so simple that no doubt could arise on it. Yet, had the auditor been disposed to delay the settlement, how easily he might have effected it, and how cruel would it be in such a case to

keep a distinguished and meritorious citizen under a temporary disability and disfranchisement. He mentioned this case merely to illustrate the objectionable nature of the proposition. He was opposed to such minutious regulations in a Constitution. The parliamentary qualifications quoted by Col. Mason had been disregarded in practice, and were but a scheme of the landed against the monied interests.

Gerry: Thought the inconvenience of excluding a few worthy individuals, who might be public debtors, or have unsettled accounts, ought not to be put in the scale against the public advantages of the regulation, and that the motion did not go far enough.

King: Observed that there might be great danger in requiring landed property as a qualification, since it might exclude the monied interest, whose aids may be essential in particular emergencies to the public safety.

Dickinson: Was against any recital of qualifications in the Constitution. It was impossible to make a complete one, and a partial one would, by implication, tie up the hands of the legislature from supplying the omissions. The best defense lay in the freeholders who were to elect the legislature. Whilst this resource should remain pure, the public interest would be safe. If it ever should be corrupt, no little expedients would repel the danger. He doubted the policy of interweaving into a republican constitution a veneration for wealth. He had always understood that a veneration for poverty and virtue were the objects of republican encouragement. It seemed improper that any man of merit should be subjected to disabilities in a republic, where merit was understood to form the great title to public trust, honors, and rewards.

Gerry: If property be one object of government, provisions to secure it cannot be improper.

Madison: Moved to strike out the word "*landed*" before the word "qualifications." If the proposition should be agreed to, he wished the Committee to be at liberty to report the best criterion they could devise. Landed possessions were no certain evidence of real wealth. Many enjoyed them to a great

extent who were more in debt than they were worth. The unjust laws of the states had proceeded more from this class of men than any others. It had often happened that men who had acquired landed property on credit got into the legislatures with a view of promoting an unjust protection against their creditors. In the next place, if a small quantity of land should be made the standard, it would be no security; if a large one, it would exclude the proper representatives of those classes of citizens who were not landholders. It was politic as well as just that the interests and rights of every class should be duly represented and understood in the public councils. It was a provision every where established that the country should be divided into districts, and representatives taken from each in order that the legislative assembly might equally understand and sympathize with the rights of the people in every part of the community. It was not less proper that every class of citizens should have an opportunity of making their rights be felt and understood in the public councils. The three principal classes into which our citizens were divisible were the landed, the commercial, and the manufacturing. The second and third class bear, as yet, a small proportion to the first. The proportion, however, will daily increase. We see in the populous countries of Europe now, what we shall be hereafter. These classes understand much less of each other's interests and affairs than men of the same class inhabiting different districts. It is particularly requisite, therefore, that the interests of one or two of them should not be left entirely to the care or impartiality of the third. This must be the case, if landed qualifications should be required; few of the mercantile, and scarcely any of the manufacturing class choosing, whilst they continue in business, to turn any part of their stock into landed property. For these reasons he wished, if it were possible, that some other criterion than the mere possession of land should be devised. He concurred with Mr. Gouverneur Morris in thinking that qualifications in the electors would be much more effectual than in the elected. The former would discriminate between real and ostensible property in the lat-

ter; but he was aware of the difficulty of forming any uniform standard that would suit the different circumstances and opinions prevailing in the different states.

G. Morris: Seconded the motion.

On the question for striking out "landed": Yeas 10 (New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia); nays 1 (Maryland).

On the question of the first part of Mason's proposition, as to "qualification of property and citizenship," as so amended: Yeas 8 (New Hampshire, Massachusetts, New Jersey, Maryland, Virginia, North Carolina, South Carolina, Georgia); nays 3 (Connecticut, Pennsylvania, Delaware).

The second part, for disqualifying debtors, and persons having unsettled accounts, being under consideration:

Carroll: Moved to strike out "having unsettled accounts."

Gorham: Seconded the motion; observing that it would put the commercial and manufacturing part of the people on a worse footing than others, as they would be most likely to have dealings with the public.

L. Martin: If these words should be struck out, and the remaining words concerning debtors retained, it will be the interest of the latter class to keep their accounts unsettled as long as possible.

Wilson: Was for striking them out. They put too much power in the hands of the auditors, who might combine with rivals in delaying settlements, in order to prolong the disqualifications of particular men. We should consider that we are providing a Constitution for future generations and not merely for the peculiar circumstances of the moment. The time has been, and will again be, when the public safety may depend on the voluntary aids of individuals, which will necessarily open accounts with the public; and when such accounts will be a characteristic of patriotism. Besides, a partial enumeration of cases will disable the legislature from disqualifying odious and dangerous characters.

Langdon: Was for striking out the whole clause, for the reasons

given by Mr. Wilson. So many exclusions, he thought, too, would render the system unacceptable to the people.

Gerry: If the arguments used today were to prevail, we might have a legislature composed of public debtors, pensioners, placemen, and contractors. He thought the proposed disqualifications would be pleasing to the people. They will be considered as a security against unnecessary or undue burdens being imposed on them. He moved to add "pensioners" to the disqualified characters; which was negatived: Yeas 3 (Massachusetts, Maryland, Georgia); nays 7 (New Hampshire, Connecticut, New Jersey, Pennsylvania, Delaware, Virginia, South Carolina); divided 1 (North Carolina).

G. Morris: The last clause, relating to public debtors, will exclude every importing merchant. Revenue will be drawn, it is foreseen, as much as possible from trade. Duties, of course, will be bonded; and the merchants will remain debtors to the public. He repeated that it had not been so much the fault of individuals as of the public that transactions between them had not been more generally liquidated and adjusted. At all events, to draw from our short and scanty experience rules that are to operate through succeeding ages does not savor much of real wisdom.

On the question for striking out "persons having unsettled accounts with the United States": Yeas 9 (New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina); nays 2 (New Jersey, Georgia).

Ellsworth: Was for disagreeing to the remainder of the clause disqualifying public debtors, and for leaving to the wisdom of the legislature and the virtue of the citizens the task of providing against such evils. Is the smallest as well as the largest debtor to be excluded? Then every arrear of taxes will disqualify. Besides, how is it to be known to the people when they elect, who are, or are not, public debtors. The exclusion of pensioners and placemen in England is founded on a consideration not existing here. As persons of that sort are dependent on the Crown, they tend to increase its influence.

C. Pinckney: Said he was at first a friend to the proposition for the sake of the clause relating to qualifications of property, but he disliked the exclusion of public debtors—it went too far. It would exclude persons who had purchased confiscated property, or should purchase western territory of the public, and might be some obstacle to the sale of the latter.

On the question for agreeing to the clause disqualifying public debtors: Yeas 2 (North Carolina, Georgia); nays 9 (New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, South Carolina).

**Agreement Referred to Committee of Detail.** Resolved, that it be an instruction to the committee to whom were referred the proceedings of the Convention for the establishment of a national government, to receive a clause, or clauses, requiring certain qualifications of property and citizenship in the United States, for . . . the members of both branches of the legislature of the United States. Twenty-third resolution on fundamentals.

**Details in Convention.** The legislature of the United States shall have authority to establish such uniform qualifications of the members of each house, with regard to property, as to the said legislature shall seem expedient. Article VI, Section 2, Committee of Detail. *Aug. 6*

C. Pinckney: The Committee, as he had conceived, were instructed to report the proper qualifications of property for the members of the national legislature, instead of which they have referred the task to the national legislature itself. Should it be left on this footing, the first legislature will meet without any particular qualifications of property; and if it should happen to consist of rich men, they might fix such qualifications as may be too favorable to the rich; if of poor men, an opposite extreme might be run into. He was opposed to the establishment of an undue aristocratic influence in the Constitution, but he thought it essential that the members of the legislature, the executive, and the judges, should be pos- *Aug. 10*



essed of competent property to make them independent and respectable. It was prudent, when such great powers were to be trusted, to connect the tie of property with that of reputation in securing a faithful administration. The legislature would have the fate of the nation put into their hands. The President would also have a very great influence on it. The judges would not only have important causes between citizen and citizen, but also where foreigners are concerned. They will even be the umpires between the United States and individual states, as well as between one state and another. Were he to fix the quantum of property which should be required, he should not think of less than one hundred thousand dollars for the President, half of that sum for each of the judges, and in like proportion for the members of the national legislature. He would, however, leave the sums blank. His motion was that the President of the United States, the judges, and members of the legislature, should be required to swear that they were respectively possessed of a clear unincumbered estate, to the amount of —— in the case of the President, etc., etc.

Rutledge: Seconded the motion; observing that the Committee had reported no qualifications, because they could not agree on any among themselves, being embarrassed by the danger, on one side of displeasing the people by making them high, and on the other, of rendering them nugatory by making them low.

Ellsworth: The different circumstances of different parts of the United States, and the probable difference between the present and future circumstances of the whole, render it improper to have either *uniform* or *fixed* qualifications. Make them so high as to be useful in the southern states and they will be inapplicable to the eastern states. Suit them to the latter and they will serve no purpose in the former. In like manner, what may be accommodated to the existing state of things among us may be very inconvenient in some future state of them. He thought for these reasons that it was better to leave this matter to the legislative discretion than to attempt a provision for it in the Constitution.

Franklin: Expressed his dislike to everything that tended to debase the spirit of the common people. If honesty was often the companion of wealth, and if poverty was exposed to peculiar temptation, it was not less true that the possession of property increased the desire of more property. Some of the greatest rogues he was ever acquainted with were the richest rogues. We should remember the character which the Scripture requires in rulers, that they should be men hating covetousness. This Constitution will be much read and attended to in Europe; and if it should betray a great partiality to the rich, will not only hurt us in the esteem of the most liberal and enlightened men there, but discourage the common people from removing to this country.

The motion of C. Pinckney was rejected by so general a *no* that the states were not called.

Madison: Was opposed to the section, as vesting an improper and dangerous power in the legislature. The qualifications of electors and elected were fundamental articles in a republican government, and ought to be fixed by the Constitution. If the legislature could regulate those of either, it can by degrees subvert the Constitution. A republic may be converted into an aristocracy or oligarchy, as well by limiting the number capable of being elected as the number authorized to elect. In all cases where the representatives of the people will have a personal interest distinct from that of their constituents, there was the same reason for being jealous of them as there was for relying on them with full confidence, when they had a common interest. This was one of the former cases. It was as improper as to allow them to fix their own wages or their own privileges. It was a power, also, which might be made subservient to the views of one faction against another. Qualifications founded on artificial distinctions may be devised by the stronger in order to keep out partizans of a weaker faction.

Ellsworth: Admitted that the power was not unexceptionable, but he could not view it as dangerous. Such a power with regard to the electors would be dangerous because it would be much more liable to abuse.

G. Morris: Moved to strike out "with regard to property" in order to leave the legislature entirely at large.

Williamson: This would surely never be admitted. Should a majority of the legislature be composed of any particular description of men, of lawyers for example, which is no improbable supposition, the future elections might be secured to their own body.

Madison: Observed that the British Parliament possessed the power of regulating the qualifications, both of the electors and the elected, and the abuse they had made of it was a lesson worthy of our attention. They had made the changes, in both cases, subservient to their own views, or to the views of political or religious parties.

On the question on the motion to strike out "with regard to property": Yeas 4 (Connecticut, New Jersey, Pennsylvania, Georgia); nays 7 (New Hampshire, Massachusetts, Delaware, Maryland, Virginia, North Carolina, South Carolina).

Rutledge: Was opposed to leaving the power to the legislature. He proposed that the qualifications should be the same as for members of the state legislatures.

Wilson: Thought it would be best, on the whole, to let the section go out. A uniform rule would probably never be fixed by the legislature; and this particular power would constructively exclude every other power of regulating qualifications.

On the question for agreeing to Article VI, Section 2: Yeas 3 (New Hampshire, Massachusetts, Georgia); nays 7 (Connecticut, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina).

#### VACANCIES IN THE HOUSE

*Aug. 6*     **Details in Convention.** Vacancies in the House of Representatives shall be supplied by writs of election from the executive authority of the state in the representation from which they shall happen. Article IV, Section 7, Committee of Detail.

*Aug. 9*     Article IV, Section 7, was agreed to, *nem. con.*

**Conclusions in Convention.** When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies. Article I, Section 2, paragraph 4. Report of Committee on Style and Arrangement. *Sept. 12*

The above provision was included in the completed Constitution approved this day. *Sept. 17*

## CONTEMPORARY EXPLICATIONS

The Federalist, Nos. 52-58

## CHAPTER 7

### THE SENATE

#### ELECTION AND OVERLAPPING TERMS OF SENATORS

- May 29*    **Preliminaries in Committee of the Whole.** Resolved, that the members of the second branch of the national legislature ought to be elected by those of the first, out of a proper number of persons nominated by the individual legislatures, . . . to hold their offices for a term sufficient to ensure their independency. Proposition in Virginia Plan.
- May 31*    **Spaight:** Contended that the second branch ought to be chosen by the state legislatures, and moved an amendment to that effect.
- Butler:** Apprehended that the taking so many powers out of the hands of the states as was proposed, tended to destroy all that balance and security of interests among the states which it was necessary to preserve; and called on Mr. Randolph, the mover of the propositions, to explain the extent of his ideas, and particularly the number of members he meant to assign to this second branch.
- Randolph:** Observed that he had, at the time of offering his propositions, stated his ideas as far as the nature of general propositions required; that details made no part of the plan, and could not perhaps with propriety have been introduced. If he was to give an opinion as to the number of the second branch, he should say that it ought to be much smaller than that of the first; so small as to be exempt from the passionate proceedings to which numerous assemblies are liable. He ob-

served that the general object was to provide a cure for the evils under which the United States labored; that in tracing these evils to their origin, every man had found it in the turbulence and follies of democracy; that some check therefore was to be sought for, against this tendency of our governments, and that a good Senate seemed most likely to answer the purpose.

King: Reminded the Committee that the choice of the second branch as proposed (by Mr. Spaight), viz., by the state legislatures, would be impracticable, unless it was to be very numerous, or *the idea of proportion* among the states was to be disregarded. According to this idea, there must be eighty or a hundred members to entitle Delaware to the choice of one of them.

Spaight: Withdrew his motion.

Wilson: Opposed both a nomination by the state legislatures and an election by the first branch of the national legislature, because the second branch of the latter ought to be independent of both. He thought both branches of the national legislature ought to be chosen by the people, but was not prepared with a specific proposition. He suggested the mode of choosing the senate of New York, to wit, of uniting several election districts for one branch, in choosing members for the other branch, as a good model.

Madison: Observed that such a mode would destroy the influence of the smaller states associated with larger ones in the same district; as the latter would choose from within themselves, although better men might be found in the former. The election of senators in Virginia, where large and small counties were often formed into one district for the purpose, had illustrated this consequence. Local partiality would often prefer a resident within the county or state to a candidate of superior merit residing out of it. Less merit also in a resident would be more known throughout his own state.

Sherman: Favored an election of one member by each of the state legislatures.

C. Pinckney: Moved to strike out the "nomination by the state

legislatures"; and on this question: Yeas 0; nays 9 (Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia); divided 1 (Delaware).

On the whole question for electing by the first branch out of nominations by the state legislatures: Yeas 3 (Massachusetts, Virginia, South Carolina); nays 7 (Connecticut, New York, New Jersey, Pennsylvania, Delaware, North Carolina, Georgia).

*June 7* Dickinson: Moved "that the members of the second branch ought to be chosen by the individual legislatures."

Sherman: Seconded the motion; observing that the particular states would thus become interested in supporting the national government, and that a due harmony between the two governments would be maintained. He admitted that the two ought to have separate and distinct jurisdictions, but that they ought to have a mutual interest in supporting each other.

C. Pinckney: If the small states should be allowed one senator only, the number will be too great; there will be eighty at least.

Dickinson: Had two reasons for his motion—first, because the sense of the states would be better collected through their governments than immediately from the people at large; secondly, because he wished the Senate to consist of the most distinguished characters, distinguished for their rank in life and their weight of property, and bearing as strong a likeness to the British House of Lords as possible; and he thought such characters more likely to be selected by the state legislatures than in any other mode. The greatness of the number was no objection with him. He hoped there would be eighty, and twice eighty of them. If their number should be small, the popular branch could not be balanced by them. The legislature of a numerous people ought to be a numerous body.

Williamson: Preferred a small number of senators, but wished that each state should have at least one. He suggested twenty-five as a convenient number. The different modes of representation in the different branches will serve as a mutual check.

Butler: Was anxious to know the ratio of representation before he gave any opinion.

Wilson: If we are to establish a national government, that government ought to flow from the people at large. If one branch of it should be chosen by the legislatures, and the other by the people, the two branches will rest on different foundations, and dissensions will naturally arise between them. He wished the Senate to be elected by the people, as well as the other branch; the people might be divided into proper districts for the purpose; and he moved to postpone the motion of Mr. Dickinson in order to take up one of that import.

G. Morris: Seconded him.

Read: Proposed "that the Senate should be appointed by the executive magistrate, out of a proper number of persons to be nominated by the individual legislatures." He said he thought it his duty to speak his mind frankly. Gentlemen he hoped would not be alarmed at the idea. Nothing short of this approach towards a proper model of government would answer the purpose, and he thought it best to come directly to the point at once. His proposition was not seconded nor supported.

Madison: If the motion (of Mr. Dickinson) should be agreed to, we must either depart from the doctrine of proportional representation or admit into the Senate a very large number of members. The first is inadmissible, being evidently unjust. The second is inexpedient. The use of the Senate is to consist in its proceeding with more coolness, with more system, and with more wisdom, than the popular branch. Enlarge their number, and you communicate to them the vices which they are meant to correct. He differed from Mr. Dickinson, who thought that the additional number would give additional weight to the body. On the contrary, it appeared to him that their weight would be in an inverse ratio to their numbers. The example of the Roman tribunes was applicable. They lost their influence and power in proportion as their number was augmented. The reason seemed to be obvious: they were appointed to take care of the popular interests and



pretensions at Rome, because the people by reason of their numbers could not act in concert and were liable to fall into factions among themselves, and to become a prey to their aristocratic adversaries. The more the representatives of the people, therefore, were multiplied, the more they partook of the infirmities of their constituents, the more liable they became to be divided among themselves, either from their own indiscretions or the artifices of the opposite faction, and of course the less capable of fulfilling their trust. When the weight of a set of men depends merely on their personal characters, the greater the number, the greater the weight. When it depends on the degree of political authority lodged in them, the smaller the number, the greater the weight. These considerations might perhaps be combined in the intended Senate, but the latter was the material one.

Gerry: Four modes of appointing the Senate have been mentioned. First, by the first branch of the national legislature—this would create a dependence contrary to the end proposed. Secondly, by the national executive—this is a stride towards monarchy that few will think of. Thirdly, by the people; the people have two great interests, the landed interest and the commercial, including the stockholders. To draw both branches from the people will leave no security to the latter interest; the people being chiefly composed of the landed interest, and erroneously supposing that the other interests are adverse to it. Fourthly, by the individual legislatures—the elections being carried through this refinement will be most like to provide some check in favor of the commercial interest against the landed; without which, oppression will take place, and no free government can last long where that is the case. He was therefore in favor of this last.

Dickinson: The preservation of the states in a certain degree of agency is indispensable. It will produce that collision between the different authorities which should be wished for in order to check each other. To attempt to abolish the states altogether would degrade the councils of our country, would be impracticable, would be ruinous. He compared the pro-

posed national system to the solar system, in which the states were the planets, and ought to be left to move freely in their proper orbits. The gentleman from Pennsylvania (Mr. Wilson) wished, he said, to extinguish these planets. If the state governments were excluded from all agency in the national one, and all power drawn from the people at large, the consequence would be that the national government would move in the same direction as the state governments now do, and would run into all the same mischiefs. The reform would only unite the thirteen small streams into one great current, pursuing the same course without any opposition whatever. He adhered to the opinion that the Senate ought to be composed of a large number, and that their influence, from family weight and other causes, would be increased thereby. He did not admit that the tribunes lost their weight in proportion as their number was augmented, and gave a historical sketch of this institution. If the reasoning (of Mr. Madison) was good, it would prove that the number of the Senate ought to be reduced below ten, the highest number of the tribunitial corps.

Wilson: The subject, it must be owned, is surrounded with doubts and difficulties. But we must surmount them. The British government cannot be our model. We have no materials for a similar one. Our manners, our laws, the abolition of entails and of primogeniture, the whole genius of the people, are opposed to it. He did not see the danger of the states being devoured by the national government. On the contrary, he wished to keep them from devouring the national government. He was not, however, for extinguishing these planets, as was supposed by Mr. Dickinson; neither did he, on the other hand, believe that they would warm or enlighten the sun. Within their proper orbits they must still be suffered to act for subordinate purposes, for which their existence is made essential by the great extent of our country. He could not comprehend in what manner the landed interest would be rendered less predominant in the Senate by an election through the medium of the legislatures than by the people themselves. If the legislatures, as was now complained, sac-

rified the commercial to the landed interest, what reason was there to expect such a choice from them as would defeat their own views? He was for an election by the people, in large districts, which would be most likely to obtain men of intelligence and uprightness; subdividing the districts only for the accommodation of voters.

Madison: Could as little comprehend in what manner family weight, as desired by Mr. Dickinson, would be more certainly conveyed into the Senate through elections by the state legislatures than in some other modes. The true question was, in what mode the best choice would be made. If an election by the people, or through any other channel than the state legislatures, promised as uncorrupt and impartial a preference of merit, there could surely be no necessity for an appointment by those legislatures. Nor was it apparent that a more useful check would be derived through that channel than from the people through some other. The great evils complained of were that the state legislatures run into schemes of paper money, etc., whenever solicited by the people, and sometimes without even the sanction of the people. Their influence, then, instead of checking a like propensity in the national legislature, may be expected to promote it. Nothing can be more contradictory than to say that the national legislature, without a proper check, will follow the example of the state legislatures; and, in the same breath, that the state legislatures are the only proper check.

Sherman: Opposed elections by the people in districts, as not likely to produce such fit men as elections by the state legislatures.

Gerry: Insisted that the commercial and monied interest would be more secure in the hands of the state legislatures than of the people at large. The former have more sense of character, and will be restrained by that from injustice. The people are for paper money, when the legislatures are against it. In Massachusetts the county conventions had declared a wish for a depreciating paper that would sink itself. Besides, in some states, there are two branches in the legislature, one of

which is somewhat aristocratic. There would therefore be so far a better chance of refinement in the choice. There seemed, he thought, to be three powerful objections against elections by districts. First, it is impracticable; the people cannot be brought to one place for the purpose; and, whether brought to the same place or not, numberless frauds would be unavoidable. Secondly, small states, forming part of the same district with a large one, or a large part of a large one, would have no chance of gaining an appointment for its citizens of merit. Thirdly, a new source of discord would be opened between different parts of the same district.

- C. Pinckney: Thought the second branch ought to be permanent and independent; and that the members of it would be rendered more so by receiving their appointments from the state legislatures. This mode would avoid the rivalships and discontents incident to the election by districts. He was for dividing the states in three classes, according to their respective sizes, and for allowing to the first class three members; to the second, two; and to the third, one.

On the question for postponing Dickinson's motion, referring the appointment of the Senate to the state legislatures, in order to consider Wilson's for referring it to the people: Yeas 1 (Pennsylvania); nays 10 (Massachusetts, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia).

Mason: Whatever power may be necessary for the national government, a certain portion must necessarily be left with the states. It is impossible for one power to pervade the extreme parts of the United States so as to carry equal justice to them. The state legislatures also ought to have some means of defending themselves against encroachments of the national government. In every other department we have studiously endeavored to provide for its self-defense. Shall we leave the states alone unprovided with the means for this purpose? And what better means can we provide than the giving them some share in, or rather to make them a constituent part of, the national establishment? There is danger on both sides, no

doubt; but we have only seen the evils arising on the side of the state governments. Those on the other side remain to be displayed. The example of Congress does not apply. Congress had no power to carry their acts into execution, as the national government will have.

On Dickinson's motion for an appointment of the Senate by the state legislatures: Yeas 10 (Massachusetts, Connecticut, New York, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia).

*June 12* Spaight: Moved to fill the blank for the duration of the appointments to the second branch of the national legislature with the words "seven years."

Sherman: Thought seven years too long. He grounded his opposition, he said, on the principle that if they did their duty well, they would be re-elected; and if they acted amiss, an earlier opportunity should be allowed for getting rid of them. He preferred five years, which would be between the terms of the first branch and of the executive.

Pierce: Proposed three years. Seven years would raise an alarm. Great mischiefs have arisen in England from their Septennial Act, which was reprobated by most of their patriotic statesmen.

Randolph: Was for the term of seven years. The democratic licentiousness of the state legislatures proved the necessity of a firm Senate. The object of this second branch is to control the democratic branch of the national legislature. If it be not a firm body, the other branch, being more numerous, and coming immediately from the people, will overwhelm it. The senate of Maryland, constituted on like principles, had been scarcely able to stem the popular torrent. No mischief can be apprehended, as the concurrence of the other branch, and in some measure of the executive, will in all cases be necessary. A firmness and independence may be the more necessary, also, in this branch, as it ought to guard the Constitution against encroachments of the executive, who will be apt to form combinations with the demagogues of the popular branch.

Madison: Considered seven years as a term by no means too long.

What we wished was to give to the government that stability which was every where called for, and which the enemies of the republican form alleged to be inconsistent with its nature. He was not afraid of giving too much stability by the term of seven years. His fear was that the popular branch would still be too great an overmatch for it. It was to be much lamented that we had so little direct experience to guide us. The constitution of Maryland was the only one that bore any analogy to this part of the plan. In no instance had the senate of Maryland created just suspicions of danger from it. In some instances, perhaps, it may have erred by yielding to the house of delegates. In every instance of their opposition to the measures of the house of delegates, they had had with them the suffrages of the most enlightened and impartial people of the other states as well as of their own. In the states where the senates were chosen in the same manner as the other branches of the legislature, and held their seats for four years, the institution was found to be no check whatever against the instabilities of the other branches. He conceived it to be of great importance that a stable and firm government, organized in the republican form, should be held out to the people. If this be not done, and the people be left to judge of this species of government by the operations of the defective systems under which they now live, it is much to be feared, the time is not distant when, in universal disgust, they will renounce the blessing which they have purchased at so dear a rate, and be ready for any change that may be proposed to them.

On the question for "seven years" as the term for the second branch: Yeas 8 (New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia); nays 1 (Connecticut); divided 2 (Massachusetts, New York).

**Fundamentals in Convention.** Resolved, that the members of the second branch of the national legislature ought to be chosen by the individual legislatures. . . . Fourth resolution, Committee of the Whole.

*June 19*

*June 25* C. Pinckney: The efficacy of the system will depend on this article. In order to form a right judgment in the case, it will be proper to examine the situation of this country more accurately than it has yet been done.

The people of the United States are perhaps the most singular of any we are acquainted with. Among them there are fewer distinctions of fortune, and less of rank, than among the inhabitants of any other nation. Every freeman has a right to the same protection and security; and a very moderate share of property entitles them to the possession of all the honors and privileges the public can bestow. Hence arises a greater equality than is to be found among the people of any other country, and an equality which is more likely to continue. I say this equality is likely to continue because in a new country, possessing immense tracts of uncultivated lands, where every temptation is offered to emigration, and where industry must be rewarded with competency, there will be few poor and few dependent. Every member of the society almost will enjoy an equal power of arriving at the supreme offices, and consequently of directing the strength and sentiments of the whole community. None will be excluded by birth, and few by fortune, from voting for proper persons to fill the offices of government. The whole community will enjoy, in the fullest sense, that kind of political liberty which consists in the power the members of the state reserve to themselves of arriving at the public offices, or at least of having votes in the nomination of those who fill them.

If this state of things is true, and the prospect of its continuance probable, it is perhaps not politic to endeavor too close an imitation of a government calculated for a people whose situation is, and whose views ought to be, extremely different.

Much has been said of the constitution of Great Britain. I will confess that I believe it to be the best constitution in existence; but, at the same time, I am confident it is one that will not or cannot be introduced into this country, for many centuries. If it were proper to go here into a historical dis-

sertation on the British constitution, it might easily be shown that the peculiar excellence, the distinguishing feature, of that government cannot possibly be introduced into our system—that its balance between the Crown and the people cannot be made a part of our Constitution—that we neither have nor can have the members to compose it, nor the rights, privileges and properties of so distinct a class of citizens to guard—that the materials for forming this balance or check do not exist, nor is there a necessity for having so permanent a part of our legislative, until the executive power is so constituted as to have something fixed and dangerous in its principle. By this I mean a sole, hereditary, though limited executive.

That we cannot have a proper body for forming a legislative balance between the inordinate power of the executive and the people is evident from a review of the accidents and circumstances which gave rise to the peerage of Great Britain. I believe it is well ascertained that the parts which compose the British constitution arose immediately from the forests of Germany; but the antiquity of the establishment of nobility is by no means clearly defined. Some authors are of opinion that the dignity denoted by the title of *dux* and *comes* was derived from the old Roman to the German Empire, while others are of opinion that they existed among the Germans long before the Romans were acquainted with them. The institution, however, of nobility is immemorial among the nations who may properly be termed the ancestors of Great Britain. At the time they were summoned in England to become a part of the national council, the circumstances which contributed to make them a constituent part of that constitution must be well known to all gentlemen who have had industry and curiosity enough to investigate the subject. The nobles, with their possessions and dependents, composed a body permanent in their nature, and formidable in point of power. They had a distinct interest both from the king and the people—an interest which could only be represented by themselves, and the guardianship of which could not be safely intrusted to others. At the time they were originally called



to form a part of the national council, necessity perhaps, as much as other causes induced the monarch to look up to them. It was necessary to demand the aid of his subjects in personal and pecuniary services. The power and possessions of the nobility would not permit taxation from any assembly of which they were not a part: and the blending of the deputies of the commons with them, and thus forming what they called their *parler-ment*, was perhaps as much the effect of chance as of any thing else. The commons were at that time completely subordinate to the nobles, whose consequence and influence seem to have been the only reasons for their superiority; a superiority so degrading to the commons that in the first summons, we find the peers are called upon to *consult*, the commons to *consent*. From this time the peers have composed a part of the British legislature; and notwithstanding their power and influence have diminished, and those of the commons have increased, yet still they have always formed an excellent balance against either the encroachments of the Crown or the people.

I have said that such a body cannot exist in this country for ages; and that until the situation of our people is exceedingly changed, no necessity will exist for so permanent a part of the legislature. To illustrate this, I have remarked that the people of the United States are more equal in their circumstances than the people of any other country; that they have very few rich men among them—by rich men I mean those whose riches may have a dangerous influence, or such as are esteemed rich in Europe—perhaps there are not one hundred such on the continent; that it is not probable this number will be greatly increased; that the genius of the people, their mediocrity of situation, and the prospects which are afforded their industry, in a country which must be a new one for centuries, are unfavorable to the rapid distinction of ranks. The destruction of the right of primogeniture, and the equal division of the property of intestates, will also have an effect to preserve this mediocrity; for laws invariably affect the manners of a people. On the other hand, that vast extent of unpeopled territory,

which opens to the frugal and industrious a sure road to competency and independence, will effectually prevent, for a considerable time, the increase of the poor or discontented, and be the means of preserving that equality of condition which so eminently distinguishes us.

If equality is, as I contend, the leading feature of the United States, where, then, are the riches and wealth whose representation and protection is the peculiar province of this permanent body? Are they in the hands of the few who may be called rich—in the possession of less than a hundred citizens? Certainly not. They are in the great body of the people, among whom there are no men of wealth, and very few of real poverty. Is it probable that a change will be created, and that a new order of men will arise? If under the British government for a century no such change was produced, I think it may be fairly concluded it will not take place while even the semblance of republicanism remains. How is the change to be effected? Where are the sources from whence it is to flow? From the landed interests? No. That is too unproductive, and too much divided in most of the states. From the monied interest? If such exists at present, little is to be apprehended from that source. Is it to spring from commerce? I believe it would be the first instance in which a nobility sprang from merchants. Besides, sir, I apprehend that on this point, the policy of the United States has been much mistaken. We have unwisely considered ourselves as the inhabitants of an old instead of a new country. We have adopted the maxims of a state full of people, and manufactures, and established in credit. We have deserted our true interest, and instead of applying closely to those improvements in domestic policy which would have ensured the future importance of our commerce, we have rashly and prematurely engaged in schemes as extensive as they are imprudent. This, however, is an error which daily corrects itself; and I have no doubt that a few more severe trials will convince us that very different commercial principles ought to govern the conduct of these states.

The people of this country are not only very different from

the inhabitants of any state we are acquainted with in the modern world, but I assert that their situation is distinct from either the people of Greece or Rome, or of any states we are acquainted with among the ancients. Can the orders introduced by the institution of Solon, can they be found in the United States? Can the military habits and manners of Sparta be resembled to our habits and manners? Are the distinction of patrician and plebeian known among us? Can the Helvetic or Belgic confederacies, or can the unwieldy, unmeaning body called the Germanic Empire, can they be said to possess either the same, or a situation like ours? I apprehend not. They are perfectly different, in their distinctions of rank, their constitutions, their manners and their policy.

Our true situation appears to me to be this—a new extensive country, containing within itself the materials for forming a government capable of extending to its citizens all the blessings of civil and religious liberty—capable of making them happy at home. This is the great end of republican establishments. We mistake the object of our government if we hope or wish that it is to make us respectable abroad. Conquest or superiority among other powers is not, or ought not ever to be, the object of republican systems. If they are sufficiently active and energetic to rescue us from contempt, and preserve our domestic happiness and security, it is all we can expect from them—it is more than almost any other government ensures to its citizens.

I believe this observation will be found generally true—that no two people are so exactly alike in their situation or circumstances as to admit the exercise of the same government with equal benefit; that a system must be suited to the habits and genius of the people it is to govern, and must grow out of them.

The people of the United States may be divided into three classes—*professional men*, who must, from their particular pursuits, always have a considerable weight in the government while it remains popular; *commercial men*, who may or may not have weight, as a wise or injudicious commercial policy is

pursued. If that commercial policy is pursued which I conceive to be the true one, the merchants of this country will not, or ought not, for a considerable time, to have much weight in the political scale. The third is the *landed interest*, the owners and cultivators of the soil, who are, and ought ever to be, the governing spring in the system. These three classes, however distinct in their pursuits, are individually equal in the political scale, and may be easily proved to have but one interest. The dependence of each on the other is mutual. The merchant depends on the planter. Both must, in private as well as public affairs, be connected with the professional men; who in their turn must in some measure depend on them. Hence it is clear, from this manifest connection, and the equality which I before stated exists, and must, for the reasons then assigned, continue, that after all there is one, but one great and equal body of citizens composing the inhabitants of this country, among whom there are no distinctions of rank, and very few or none of fortune.

For a people thus circumstanced are we, then, to form a government; and the question is, what sort of government is best suited to them?

Will it be the British government? No. Why? Because Great Britain contains three orders of people distinct in their situation, their possessions, and their principles. These orders, combined, form the great body of the nation; and as in national expenses the wealth of the whole community must contribute, so ought each component part to be duly and properly represented. No other combination of power could form this due representation but the one that exists. Neither the peers or the people could represent the royalty; nor could the royalty and the people form a proper representation for the peers. Each, therefore, must of necessity be represented by itself, or the sign of itself; and this accidental mixture has certainly formed a government admirably well balanced.

But the United States contain but one order that can be assimilated to the British nation—this is the order of commons. They will not, surely then, attempt to form a govern-

ment consisting of three branches, two of which shall have nothing to represent. They will not have an executive and Senate (hereditary), because the King and Lords of England are so. The same reasons do not exist, and therefore the same provisions are not necessary.

We must, as has been observed, suit our government to the people it is to direct. These are, I believe, as active, intelligent and susceptible of good government as any people in the world. The confusion which has produced the present relaxed state is not owing to them. It is owing to the weakness and [defects] of a government incapable of combining the various interests it is intended to unite, and destitute of energy. All that we have to do, then, is to distribute the powers of government in such a manner, and for such limited periods, as, while it gives a proper degree of permanency to the magistrate, will reserve to the people the right of election they will not or ought not frequently to part with. I am of opinion that this may easily be done; and that, with some amendments, the propositions before the Committee will fully answer this end.

No position appears to me more true than this, that the general government cannot effectually exist without reserving to the states the possession of their local rights. They are the instruments upon which the Union must frequently depend for the support and execution of their powers, however immediately operating upon the people and not upon the states.

Much has been said about the propriety of abolishing the distinction of state governments, and having but one general system. Suffer me for a moment to examine this question.<sup>1</sup>

The mode of constituting the second branch being under consideration, the word "national" was struck out and "United States" inserted.

Gorham: Inclined to a compromise as to the rule of proportion.

He thought there was some weight in the objections of the small states. If Virginia should have sixteen votes, and Delaware with several other states together sixteen, those from Virginia would be more likely to unite than the others, and

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<sup>1</sup> The residue of this speech was not furnished, like the above, by Mr. Pinckney.

would therefore have an undue influence. This remark was applicable not only to states but to counties or other districts of the same state. Accordingly, the constitution of Massachusetts had provided that the representatives of the larger districts should not be in an exact ratio to their numbers; and experience, he thought, had shown the provision to be expedient.

Read: The states have heretofore been in a sort of partnership. They ought to adjust their old affairs before they opened a new account. He brought into view the appropriation of the common interest in the western lands to the use of particular states. Let justice be done on this head; let the fund be applied fairly and equally to the discharge of the general debt; and the smaller states, who had been injured, would listen then, perhaps, to those ideas of just representation which had been held out.

Gorham: Could not see how the Convention could interpose in the case. Errors, he allowed, had been committed on the subject. But Congress were now using their endeavors to rectify them. The best remedy would be such a government as would have vigor enough to do justice throughout. This was certainly the best chance that could be afforded to the smaller states.

Wilson: The question is, shall the members of the second branch be chosen by the legislatures of the states? When he considered the amazing extent of country—the immense population which is to fill it—the influence of the government we are to form will have, not only on the present generation of our people and their multiplied posterity, but on the whole globe—he was lost in the magnitude of the object. The project of Henry IV and his statesmen was but the picture in miniature of the great portrait to be exhibited. He was opposed to an election by the state legislatures. In explaining his reasons, it was necessary to observe the twofold relation in which the people would stand—first, as citizens of the general government; and secondly as citizens of their particular state. The general government was meant for them in the first capacity; the state governments in the second. Both governments were

derived from the people—both meant for the people—both, therefore, ought to be regulated on the same principles. The same train of ideas which belonged to the relation of the citizens to their state governments were applicable to their relation to the general government; and in forming the latter, we ought to proceed by abstracting as much as possible from the idea of the state governments. With respect to the province and object of the general government, they should be considered as having no existence. The election of the second branch by the legislatures will introduce and cherish local interests and local prejudices. The general government is not an assemblage of states but of individuals for certain political purposes; it is not meant for the states, but for the individuals composing them; the *individuals*, therefore, not the *states*, ought to be represented in it. A proportion in this representation can be preserved in the second as well as in the first branch; and the election can be made by electors chosen by the people for that purpose. He moved an amendment to that effect; which was not seconded.

Ellsworth: Saw no reason for departing from the mode contained in the report. Whoever chooses the member, he will be a citizen of the state he is to represent; and will feel the same spirit, and act the same part, whether he be appointed by the people or the legislature. Every state has its particular views and prejudices, which will find their way into the general council, through whatever channel they may flow. Wisdom was one of the characteristics which it was in contemplation to give the second branch—would not more of it issue from the legislatures than from an immediate election by the people? He urged the necessity of maintaining the existence and agency of the states. Without their cooperation it would be impossible to support a republican government over so great an extent of country. An army could scarcely render it practicable. The largest states are the worst governed. Virginia is obliged to acknowledge her incapacity to extend her government to Kentucky. Massachusetts cannot keep the peace one

hundred miles from her capital, and is now forming an army for its support. How long Pennsylvania may be free from a like situation cannot be foreseen. If the principles and materials of our government are not adequate to the extent of these single states, how can it be imagined that they can support a single government throughout the United States? The only chance of supporting a general government lies in grafting it on those of the individual states.

Johnson: Urged the necessity of preserving the state governments, which would be at the mercy of the general government on Mr. Wilson's plan.

Madison: Thought it would obviate difficulty if the present resolution were postponed and the eighth taken up, which is to fix the right of suffrage in the second branch.

Williamson: Professed himself a friend to such a system as would secure the existence of the state governments. The happiness of the people depended on it. He was at a loss to give his vote as to the Senate until he knew the number of its members. In order to ascertain this, he moved to insert, after "second branch of the national legislature," the words "who shall bear such proportion to the number of the first branch as one to ———." He was not seconded.

Mason: It has been agreed on all hands that an efficient government is necessary; that, to render it such, it ought to have the faculty of self-defense; that to render its different branches effectual, each of them ought to have the same power of self-defense. He did not wonder that such an agreement should have prevailed on these points. He only wondered that there should be any disagreement about the necessity of allowing the state governments the same self-defense. If they are to be preserved, as he conceived to be essential, they certainly ought to have this power; and the only mode left of giving it to them was by allowing them to appoint the second branch of the national legislature.

Butler: Observing that we were put to difficulties at every step by the uncertainty whether an equality or a ratio of repre-



sentation would prevail finally in the second branch, moved to postpone the fourth resolution and to proceed to the eighth resolution on that point.

Madison: Seconded him.

On the question: Yeas 4 (New York, Virginia, South Carolina, Georgia); nays 7 (Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, North Carolina).

On a question to postpone the fourth and take up the seventh resolution: Yeas 5 (Maryland, Virginia, North Carolina, South Carolina, Georgia); nays 6 (Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Delaware).

On the question to agree "that the members of the second branch be chosen by the individual legislatures": Yeas 9 (Massachusetts, Connecticut, New York, New Jersey, Delaware, Maryland, North Carolina, South Carolina, Georgia); nays 2 (Pennsylvania, Virginia).

On a question to strike out the words "sufficient to ensure their independence" after the word "term," it was agreed to.

The clause that the second branch hold their offices for a term of "seven years" being considered:

Gorham: Suggests a term of "four years," one-fourth to be elected every year.

Randolph: Supported the idea of rotation, as favorable to the wisdom and stability of the corps; which might possibly be always sitting, and aiding the executive, and moves, after "seven years" to add "to go out in fixed proportion," which was agreed to.

Williamson: Suggests "six years" as more convenient for rotation than "seven years."

Sherman: Seconds him.

Read: Proposed that they should hold their offices "during good behavior."

R. Morris: Seconds him.

C. C. Pinckney: Proposed "four years." A longer time would fix them at the seat of government. They would acquire an interest there, perhaps transfer their property, and lose sight

of the states they represent. Under these circumstances, the distant states would labor under great disadvantages.

Sherman: Moved to strike out "seven years," in order to take questions on the several propositions.

On the question to strike out "seven": Yeas 7 (Massachusetts, Connecticut, New York, New Jersey, North Carolina, South Carolina, Georgia); nays 3 (Pennsylvania, Delaware, Virginia); divided 1 (Maryland).

On the question to insert "six years": Yeas 5 (Connecticut, Pennsylvania, Delaware, Virginia, North Carolina); nays 5 (Massachusetts, New York, New Jersey, South Carolina, Georgia); divided 1 (Maryland).

On the question for "five years": Yeas 5 (Connecticut, Pennsylvania, Delaware, Virginia, North Carolina); nays 5 (Massachusetts, New York, New Jersey, South Carolina, Georgia); divided 1 (Maryland).

Gorham: Moved to fill the blank with "six years," one-third of the members to go out every second year. *June 26*

Wilson: Seconded the motion.

C. C. Pinckney: Opposed six years, in favor of four years. The states, he said, had different interests. Those of the southern, and of South Carolina in particular, were different from the northern. If the senators should be appointed for a long term, they would settle in the state where they exercised their functions, and would in a little time be rather the representatives of that than of the state appointing them.

Read: Moved that the term be nine years. This would admit of a very convenient rotation, one-third going out triennially. He would still prefer "during good behavior"; but being little supported in that idea, he was willing to take the longest term that could be obtained.

Broom: Seconded the motion.

Madison: In order to judge of the form to be given to this institution, it will be proper to take a view of the ends to be served by it. These were—first, to protect the people against their rulers; secondly, to protect the people against the tran-

sient impressions into which they themselves might be led. A people deliberating in a temperate moment, and with the experience of other nations before them, on the plan of government most likely to secure their happiness, would first be aware that those charged with the public happiness might betray their trust. An obvious precaution against this danger would be to divide the trust between different bodies of men, who might watch and check each other. In this they would be governed by the same prudence which has prevailed in organizing the subordinate departments of government, where all business liable to abuses is made to pass through separate hands, the one being a check on the other. It would next occur to such a people that they themselves were liable to temporary errors, through want of information as to their true interest; and that men chosen for a short term, and employed but a small portion of that in public affairs, might err from the same cause. This reflection would naturally suggest that the government be so constituted as that one of its branches might have an opportunity of acquiring a competent knowledge of the public interests. Another reflection equally becoming a people on such an occasion would be that they themselves, as well as a numerous body of representatives, were liable to err, also, from fickleness and passion. A necessary fence against this danger would be to select a portion of enlightened citizens whose limited number and firmness might seasonably interpose against impetuous counsels. It ought finally to occur to a people deliberating on a government for themselves that as different interests necessarily result from the liberty meant to be secured, the major interest might, under sudden impulses, be tempted to commit injustice on the minority. In all civilized countries the people fall into different classes, having a real or supposed difference of interests. There will be creditors and debtors, farmers, merchants, and manufacturers. There will be, particularly, the distinction of rich and poor. It was true, as had been observed (by Mr. Pinckney), we had not among us those hereditary distinctions of rank which were a great source of the

contests in the ancient governments, as well as the modern states of Europe; nor those extremes of wealth or poverty, which characterize the latter. We cannot, however, be regarded, even at this time, as one homogeneous mass, in which every thing that affects a part will affect in the same manner the whole. In framing a system which we wish to last for ages, we should not lose sight of the changes which ages will produce. An increase of population will of necessity increase the proportion of those who will labor under all the hardships of life, and secretly sigh for a more equal distribution of its blessings. These may in time outnumber those who are placed above the feelings of indigence. According to the equal laws of suffrage, the power will slide into the hands of the former. No agrarian attempts have yet been made in this country; but symptoms of a levelling spirit, as we have understood, have sufficiently appeared in a certain quarter to give notice of the future danger. How is this danger to be guarded against, on the republican principles? How is the danger, in all cases of interested coalitions to oppress the minority, to be guarded against? Among other means, by the establishment of a body, in the government, sufficiently respectable for its wisdom and virtue to aid, on such emergencies, the preponderance of justice, by throwing its weight into that scale. Such being the objects of the second branch in the proposed government, he thought a considerable duration ought to be given to it. He did not conceive that the term of nine years could threaten any real danger; but, in pursuing his particular ideas on the subject, he should require that the long term allowed to the second branch should not commence till such a period of life as would render a perpetual disqualification to be re-elected, little inconvenient either in a public or private view. He observed that as it was more than probable we were now digesting a plan which in its operation would decide for ever the fate of republican government, we ought not only to provide every guard to liberty that its preservation could require, but be equally careful to supply the defects which our own experience had particularly pointed out.

Sherman: Government is instituted for those who live under it.

It ought, therefore, to be so constituted as not to be dangerous to their liberties. The more permanency it has, the worse, if it be a bad government. Frequent elections are necessary to preserve the good behavior of rulers. They also tend to give permanency to the government by preserving that good behavior because it ensures their re-election. In Connecticut, elections have been very frequent, yet great stability and uniformity, both as to persons and measures, have been experienced from its original establishment to the present time, a period of more than a hundred and thirty years. He wished to have provision made for steadiness and wisdom, in the system to be adopted, but he thought six or four years would be sufficient. He should be content with either.

Read: Wished it to be considered by the small states that it was their interest that we should become one people as much as possible; that state attachments should be extinguished as much as possible; that the Senate should be so constituted as to have the feelings of citizens of the whole.

Hamilton: He did not mean to enter particularly into the subject. He concurred with Mr. Madison in thinking we were now to decide forever the fate of republican government; and that if we did not give to that form due stability and wisdom, it would be disgraced and lost among ourselves, disgraced and lost to mankind forever. He acknowledged himself not to think favorably of republican government, but addressed his remarks to those who did think favorably of it, in order to prevail on them to tone their government as high as possible. He professed himself to be as zealous an advocate for liberty as any man whatever, and trusted he should be as willing a martyr to it, though he differed as to the form in which it was most eligible. He concurred also in the general observations of Mr. Madison on the subject, which might be supported by others if it were necessary. It was certainly true, that nothing like an equality of property existed; that an inequality would exist as long as liberty existed, and that it would unavoidably result from that very liberty itself. This inequality of prop-

erty constituted the great and fundamental distinction in society. When the tribunitial power had levelled the boundary between the *patricians* and *plebeians*, what followed? The distinction between rich and poor was substituted. He meant not, however, to enlarge on the subject. He rose principally to remark that Mr. Sherman seemed not to recollect that one branch of the proposed government was so formed as to render it particularly the guardians of the poorer orders of citizens; nor to have adverted to the true causes of the stability which had been exemplified in Connecticut. Under the British system, as well as the federal, many of the great powers appertaining to government, particularly all those relating to foreign nations, were not in the hands of the government there. Their internal affairs, also, were extremely simple, owing to sundry causes, many of which were peculiar to that country. Of late the government had entirely given way to the people, and had in fact suspended many of its ordinary functions, in order to prevent those turbulent scenes which had appeared elsewhere. He asks Mr. Sherman whether the state, at this time, dare impose and collect a tax on the people? To these causes, and not to the frequency of elections, the effect, as far as it existed, ought to be chiefly ascribed.

Gerry: Wished we could be united in our ideas concerning a permanent government. All aim at the same end, but there are great differences as to the means. One circumstance, he thought, should be carefully attended to. There was not a one-thousandth part of our fellow citizens who were not against every approach towards monarchy—will they ever agree to a plan which seems to make such an approach? The Convention ought to be extremely cautious in what they hold out to the people. Whatever plan may be proposed will be espoused with warmth by many, out of respect to the quarter it proceeds from, as well as from an approbation of the plan itself. And if the plan should be of such a nature as to rouse a violent opposition, it is easy to foresee that discord and confusion will ensue, and it is even possible that we may become a prey to foreign powers. He did not deny the position of Mr.

Madison, that the majority will generally violate justice when they have an interest in so doing; but did not think there was any such temptation in this country. Our situation was different from that of Great Britain; and the great body of lands yet to be parcelled out and settled would very much prolong the difference. Notwithstanding the symptoms of injustice which had marked many of our public councils, they had not proceeded so far as not to leave hopes that there would be a sufficient sense of justice and virtue for the purpose of government. He admitted the evils arising from a frequency of elections, and would agree to give the Senate a duration of four or five years. A longer term would defeat itself. It never would be adopted by the people.

Wilson: Did not mean to repeat what had fallen from others, but would add an observation or two which he believed had not yet been suggested. Every nation may be regarded in two relations, first, to its own citizens; secondly, to foreign nations. It is, therefore, not only liable to anarchy and tyranny within, but has wars to avoid and treaties to obtain from abroad. The Senate will probably be the depository of the powers concerning the latter objects. It ought therefore to be made respectable in the eyes of foreign nations. The true reason why Great Britain has not yet listened to a commercial treaty with us has been because she had no confidence in the stability or efficacy of our government. Nine years, with a rotation, will provide these desirable qualities, and give our government an advantage in this respect over monarchy itself. In a monarchy, much must always depend on the temper of the man. In such a body, the personal character will be lost in the political. He would add another observation. The popular objection against appointing any public body for a long term was that it might, by gradual encroachments, prolong itself, first into a body for life, and finally become a hereditary one. It would be a satisfactory answer to this objection that as one-third would go out triennially, there would be always three divisions holding their places for unequal times, and consequently acting under the influence of different views, and different impulses.

On the question for nine years, one-third to go out triennially:  
Yeas 3 (Pennsylvania, Delaware, Virginia); nays 8 (Massachusetts, Connecticut, New York, New Jersey, Maryland, North Carolina, South Carolina, Georgia).

On the question for six years, one-third to go out biennially:  
Yeas 7 (Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, Virginia, North Carolina); nays 4 (New York, New Jersey, South Carolina, Georgia).

**Agreements Referred to Committee of Detail.** Resolved, that the members of the second branch of the legislature of the United States ought to be chosen by the individual legislatures; . . . to hold their offices for six years, one-third to go out biennially. . . . Fourth resolution on fundamentals. July 26

**Details in Convention.** The Senate of the United States shall be chosen by the legislatures of the several states. Each legislature shall choose two members. . . . Article V, Section 1, Committee of Detail. Aug. 6

The senators shall be chosen for six years; but immediately after the first election they shall be divided, by lot, into three classes, as nearly as may be, numbered one, two, and three. The seats of the members of the first class shall be vacated at the expiration of the second year; of the second class at the expiration of the fourth year; of the third class at the expiration of the sixth year; so that a third part of the members may be chosen every second year. Article V, Section 2, Committee of Detail.

G. Morris: Moved to insert after the words "immediately after," the following: "they shall be assembled in consequence of," which was agreed to, *nem. con.*, as was then the whole section (Article V, Section 2). Aug. 9

**Conclusions in Convention.** The Senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years. . . . Article I, Section 3, paragraph 1. Report of Committee on Style and Arrangement. Sept. 12



Immediately after they shall be assembled in consequence of the first election, they shall be divided (by lot), as equally as may be, into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year; so that one-third may be chosen every second year. . . . Article I, Section 3, paragraph 2. Report of Committee on Style and Arrangement.

*Sept. 14* Madison: Moved that the words "by lot"<sup>2</sup> be struck out, that some rule might prevail in the rotation that would prevent both the members from the same state from going out at the same time. The words "by lot" were struck out, *nem. con.*

*Sept. 17* Article I, Section 3, paragraphs 1 and 2, of the completed Constitution, are as follows: The Senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years. . . .

Immediately after they shall be assembled in consequence of the first election, they shall be divided, as equally as may be, into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year. . . .

#### QUALIFICATIONS OF SENATORS

*May 29* Preliminaries in Committee of the Whole. Resolved, that the members of the second branch of the national legislature ought . . . to be of the age of ——— years at least. . . . Proposition in Virginia Plan.

*June 12* On the question for striking out from the fifth resolution the words requiring members of the senatorial branch to be of

<sup>2</sup> "By lot," had been reinstated from the report of the committee of five made on the sixth of August, as a correction of the printed Report of the Committee on Style and Arrangement.

the age of ——— years at least: Yeas 3 (Connecticut, New Jersey, Pennsylvania); nays 6 (Massachusetts, New York, Delaware, Maryland, Virginia, South Carolina); divided 2 (North Carolina, Georgia).

On the question for filling the blank with “thirty years” as the qualification, it was agreed to: Yeas 7 (Massachusetts, New York, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina); nays 4 (Connecticut, New Jersey, Delaware, Georgia).

**Fundamentals in Convention.** Resolved, that the members of the second branch of the national legislature ought . . . to be of the age of thirty years at least. . . . Fourth resolution, Committee of the Whole. *June 19*

On a question on the clause requiring the age of thirty years at least, it was unanimously agreed to. *June 25*

**Agreements Referred to Committee of Detail.** Resolved, that the members of the second branch of the legislature of the United States ought . . . to be of the age of thirty years at least. . . . Fourth resolution on fundamentals. *July 26*

Resolved, that it be an instruction to the Committee to whom were referred the proceedings of the Convention for the establishment of a national government, to receive a clause, or clauses, requiring certain qualifications of property and citizenship in the United States, for . . . the members of both branches of the legislature of the United States. Twenty-third resolution on fundamentals.

**Details in Convention.** Every member of the Senate shall be of the age of thirty years at least; shall have been a citizen in the United States for at least four years before his election; and shall be, at the time of his election, a resident of the state for which he shall be chosen. Article V, Section 3, Committee of Detail. *Aug. 6*

G. Morris: Moved to insert fourteen instead of four years of citizenship as a qualification for senators; urging the danger of admitting strangers into our public councils. *Aug. 9*

C. Pinckney: Seconded him.

Ellsworth: Was opposed to the motion, as discouraging meritorious aliens from emigrating to this country.

C. Pinckney: As the Senate is to have the power of making treaties and managing our foreign affairs, there is peculiar danger and impropriety in opening its door to those who have foreign attachments. He quoted the jealousy of the Athenians on this subject, who made it death for any stranger to intrude his voice into their legislative proceedings.

Mason: Highly approved of the policy of the motion. Were it not that many, not natives of this country, had acquired great credit during the Revolution, he should be for restraining the eligibility into the Senate to natives.

Madison: Was not averse to some restrictions on this subject, but could never agree to the proposed amendment. He thought any restriction, however, in the *Constitution* unnecessary and improper—unnecessary, because the national legislature is to have the right of regulating naturalization, and can by virtue thereof fix different periods of residence as conditions of enjoying different privileges of citizenship; improper, because it will give a tincture of illiberality to the Constitution, because it will put out of the power of the national legislature, even by special acts of naturalization, to confer the full rank of citizens on meritorious strangers, and because it will discourage the most desirable class of people from emigrating to the United States. Should the proposed Constitution have the intended effect of giving stability and reputation to our governments, great numbers of respectable Europeans, men who loved liberty, and wished to partake its blessings, will be ready to transfer their fortunes hither. All such would feel the mortification of being marked with suspicious incapacitations, though they should not covet the public honors. He was not apprehensive that any dangerous number of strangers would be appointed by the state legislatures, if they were left at liberty to do so, nor that foreign powers would make use of strangers, as instruments for their purposes. Their bribes would be expended on men whose circumstances would rather

stifle than excite jealousy and watchfulness in the public. Butler: Was decidedly opposed to the admission of foreigners without a long residence in the country. They bring with them not only attachments to other countries, but ideas of government so distinct from ours that in every point of view they are dangerous. He acknowledged that if he himself had been called into public life within a short time after his coming to America, his foreign habits, opinions, and attachments, would have rendered him an improper agent in public affairs. He mentioned the great strictness observed in Great Britain on this subject.

Franklin: Was not against a reasonable time, but should be very sorry to see any thing like illiberality inserted in the Constitution. The people in Europe are friendly to this country. Even in the country with which we have been lately at war, we have now, and had during the war, a great many friends, not only among the people at large but in both houses of Parliament. In every other country in Europe, all the people are our friends. We found in the course of the Revolution that many strangers served us faithfully and that many natives took part against their country. When foreigners, after looking about for some other country in which they can obtain more happiness, give a preference to ours, it is a proof of attachment which ought to excite our confidence and affection.

Randolph: Did not know but it might be problematical whether emigrations to this country were on the whole useful or not: but he could never agree to the motion for disabling them, for fourteen years, to participate in the public honors. He reminded the Convention of the language held by our patriots during the Revolution, and the principles laid down in all our American constitutions. Many foreigners may have fixed their fortunes among us under the faith of these invitations. All persons under this description, with all others who would be affected by such a regulation, would enlist themselves under the banners of hostility to the proposed system. He would go as far as seven years, but no further.

Wilson: Said he rose with feelings which were perhaps peculiar;

mentioning the circumstance of his not being a native, and the possibility, if the ideas of some gentlemen should be pursued, of his being incapacitated from holding a place under the very Constitution which he had shared in the trust of making. He remarked the illiberal complexion which the motion would give to the system, and the effect which a good system would have in inviting meritorious foreigners among us, and the discouragement and mortification they must feel from the degrading discrimination now proposed. He had himself experienced this mortification. On his removal into Maryland he found himself, from defect of residence, under certain legal incapacities which never ceased to produce chagrin, though he assuredly did not desire, and would not have accepted, the offices to which they related. To be appointed to a place must be a matter of indifference. To be incapable of being appointed is a circumstance grating and mortifying.

G. Morris: The lesson we are taught is that we should be governed as much by our reason and as little by our feelings as possible. What is the language of reason on this subject? That we should not be polite at the expense of prudence. There was a moderation in all things. It is said that some tribes of Indians carried their hospitality so far as to offer to strangers their wives and daughters. Was this a proper model for us? I would admit them to his house, he would invite them to his table, would provide for them comfortable lodgings, but would not carry the complaisance so far as to bed them with his wife. He would let them worship at the same altar, but did not choose to make priests of them. He ran over the privileges which emigrants would enjoy among us, though they should be deprived of that of being eligible to the great office of government; observing that they exceeded the privileges allowed to foreigners in any part of the world; and that every society, from a great nation down to a club, had the right of declaring the conditions on which new members should be admitted, there could be no room for complaint. As to those philosophical gentlemen, those citizens of the world as they called themselves, he owned he did not wish to see a

of them in our public councils. He would not trust them. The men who can shake off their attachments to their own country can never love any other. These attachments are the wholesome prejudices which uphold all governments. Admit a Frenchman into your Senate, and he will study to increase the commerce of France: an Englishman, and he will feel an equal bias in favor of that of England. It has been said that the legislatures will not choose foreigners, at least improper ones. There was no knowing what legislatures would do. Some appointments made by them proved that every thing ought to be apprehended from the cabals practiced on such occasions. He mentioned the case of a foreigner who left this state in disgrace and worked himself into an appointment from another to Congress.

On the question, on the motion of G. Morris, to insert "fourteen" in place of "four" years: Yeas 4 (New Hampshire, New Jersey, South Carolina, Georgia); nays 7 (Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, Virginia, North Carolina).

On the question for "thirteen years," moved by G. Morris, it was negatived, as above.

On "ten years," moved by C. C. Pinckney, the votes were the same.

Franklin: Reminded the Convention that it did not follow, from an omission to insert the restriction in the Constitution, that the persons in question would be actually chosen into the legislature.

Rutledge: Seven years of citizenship have been required for the House of Representatives. Surely a longer time is requisite for the Senate, which will have more power.

Williamson: It is more necessary to guard the Senate in this case than the other house. Bribery and cabal can be more easily practiced in the choice of the Senate, which is to be made by the legislatures composed of a few men, than of the House of Representatives, who will be chosen by the people.

Randolph: Will agree to nine years, with the expectation that it will be reduced to seven, if Mr. Wilson's motion to recon-

sider the vote fixing seven years for the House of Representatives should produce a reduction of that period.

On the question for "nine years": Yeas 6 (New Hampshire, New Jersey, Delaware, Virginia, South Carolina, Georgia); nays 4 (Massachusetts, Connecticut, Pennsylvania, Maryland); divided 1 (North Carolina).

The term "resident" was struck out and "inhabitant" inserted, *nem. con.*

Article V, Section 3, as amended, was then agreed to, *nem. con.*

*Aug. 13* Wilson: Moved that, in Article V, Section 3, "nine years" be reduced to "seven"; which was disagreed to, and Article V, Section 3, confirmed by the following vote: Yeas 8 (New Hampshire, Massachusetts, New Jersey, Delaware, Virginia, North Carolina, South Carolina, Georgia); nays 3 (Connecticut, Pennsylvania, Maryland).

[See deliberations on property qualifications for the House of Representatives.]

*Sept. 12* **Conclusions in Convention.** No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen. Article I, Section 3, paragraph 3. Report of Committee on Style and Arrangement.

*Sept. 17* The recommendation of the Committee on Style and Arrangement was included in the completed Constitution without change.

#### VACANCIES IN THE SENATE

*Aug. 6* **Details in Convention.** . . . Vacancies may be supplied by the executive until the next meeting of the legislature. . . . Article V, Section 1, Committee of Detail.

*Aug. 9* Wilson: Objected to vacancies in the Senate being supplied by the executives of the states. It was unnecessary, as the legislatures will meet so frequently. It removes the appointment too far from the people, the executives in most of the states being

elected by the legislatures. As he had always thought the appointment of the executive by the legislative department wrong, so it was still more so that the executive should elect into the legislative department.

Randolph: Thought it necessary in order to prevent inconvenient chasms in the Senate. In some states the legislatures meet but once a year. As the Senate will have more power and consist of a smaller number than the other house, vacancies there will be of more consequence. The executives might be safely trusted, he thought, with the appointment for so short a time.

Ellsworth: It is only said that the executive *may* supply vacancies. When the legislative meeting happens to be near, the power will not be exerted. As there will be but two members from a state, vacancies may be of great moment.

Williamson: Senators may resign or not accept. This provision is therefore absolutely necessary.

On the question for striking out "vacancies shall be supplied by the executives": Yeas 1 (Pennsylvania); nays 8 (New Hampshire, Massachusetts, Connecticut, New Jersey, Virginia, North Carolina, South Carolina, Georgia); divided 1 (Maryland).

Williamson: Moved to insert, after "vacancies shall be supplied by the executives" the words "unless other provision shall be made by the legislature" [of the state].

Ellsworth: He was willing to trust the legislature, or the executive of a state, but not to give the former a discretion to refer appointments for the Senate to whom they pleased.

On the question on Williamson's motion: Yeas 4 (Maryland, North Carolina, South Carolina, Georgia); nays 6 (New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Virginia).

Madison: In order to prevent doubts whether resignations could be made by senators, or whether they could refuse to accept, moved to strike out the words after "vacancies" and insert the words "happening by refusals to accept, resignations, or otherwise, may be supplied by the legislature of the state in the



representation of which such vacancies shall happen, or by the executive thereof until the next meeting of the legislature."

G. Morris: This is absolutely necessary; otherwise, as members chosen into the Senate are disqualified from being appointed to any office by Section 9 of this article, it will be in the power of a legislature, by appointing a man a senator against his consent, to deprive the United States of his services.

The motion of Madison was agreed to, *nem. con.*

*Sept. 12* **Conclusions in Convention.** . . . and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature. Article I, Section 3, paragraph 2. Report of Committee on Style and Arrangement.

*Sept. 17* The above provision became Article I, Section 3, paragraph 2, as follows: . . . and if vacancies happen, by resignation, or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

#### PRESIDENT OF THE SENATE

**Details in Convention.** The report of the Committee on Unfinished Business, submitted to the Convention on September 4, recommended the election of a Vice President by the electoral college. [See the deliberations on this subject in Chapter 16 of this volume showing how the Vice President became ex-officio president of the Senate.]

#### CONTEMPORARY EXPLICATIONS

The Federalist, Nos. 62-63

CHAPTER 8  
REPRESENTATION IN THE FEDERAL  
LEGISLATURE

BASIS OF REPRESENTATION

Preliminaries in Committee of the Whole. Resolved, therefore, May 29  
that the rights of suffrage in the national legislature ought to  
be proportioned to the quotas of contribution, or to the num-  
ber of free inhabitants, as the one or the other rule may seem  
best in different cases. Proposition in Virginia Plan.

Madison: Observing that the words "*or to the number of free* May 30  
*inhabitants*" might occasion debates which would divert the  
Committee from the general question whether the principle  
of representation should be changed, moved that they might  
be struck out.

King: Observed that the quotas of contribution, which would  
alone remain as the measure of representation, would not an-  
swer; because, waiving every other view of the matter, the  
revenue might hereafter be so collected by the general govern-  
ment that the sums respectively drawn from the states would  
not appear, and would besides be continually varying.

Madison: Admitted the propriety of the observation, and that  
some better rule ought to be found.

Hamilton: Moved to alter the resolution so as to read, "that the  
rights of suffrage in the national legislature ought to be pro-  
portioned to the number of free inhabitants."

Spaight: Seconded the motion.

It was then moved that the resolution be postponed; which was  
agreed to.

Randolph and Madison: Then moved the following resolution: "that the rights of suffrage in the national legislature ought to be proportioned."

It was moved and seconded to amend it by adding, "and not according to the present system," which was agreed to.

It was then moved and seconded to alter the resolution so as to read, "that the rights of suffrage in the national legislature ought not to be according to the present system."

It was then moved and seconded to postpone the resolution moved by Randolph and Madison; which, being agreed to:

Madison: Moved, in order to get over the difficulties, the following resolution: "that the equality of suffrage established by the Articles of Confederation ought not to prevail in the national legislature; and that an equitable ratio of representation ought to be substituted." This was seconded by G. Morris, and, being generally relished, would have been agreed to; when—

Read: Moved that the whole clause relating to the point of representation be postponed; reminding the Committee that the deputies from Delaware were restrained by their commission from assenting to any change of the rule of suffrage, and in case such a change should be fixed on, it might become their duty to retire from the Convention.

G. Morris: Observed that the valuable assistance of those members could not be lost without real concern; and that so early a proof of discord in the Convention as the secession of a state would add much to the regret; that the change proposed was, however, so fundamental an article in a national government that it could not be dispensed with.

Madison: Observed that whatever reason might have existed for the equality of suffrage when the Union was a federal one among sovereign states, it must cease when a national government should be put into the place. In the former case, the acts of Congress depended so much for their efficacy on the co-operation of the states that these had a weight, both within and without Congress, nearly in proportion to their extent and importance. In the latter case, as the acts of the general

government would take effect without the intervention of the state legislatures, a vote from a small state would have the same efficacy and importance as a vote from a large one, and there was the same reason for different numbers of representatives from different states as from counties of different extents within particular states. He suggested as an expedient for at once taking the sense of the members on this point, and saving the Delaware deputies from embarrassment, that the question should be taken in Committee, and the clause, on report to the House, be postponed without a question there. This, however, did not appear to satisfy Mr. Read.

By several it was observed that no just construction of the act of Delaware could require or justify a secession of her deputies, even if the resolution were to be carried through the House as well as the Committee. It was finally agreed, however, that the clause should be postponed: it being understood that in the event the proposed change of representation would certainly be agreed to, no objection or difficulty being started from any other quarter than from Delaware.

The motion of Mr. Read to postpone was agreed to.

C. Pinckney and Rutledge: Moved to add to the fourth resolution, agreed to by the Committee, the following, viz., "that the states be divided into three classes, the first class to have three members, the second two, and the third one member, each; that an estimate be taken of the comparative importance of each state at fixed periods, so as to ascertain the number of members they may from time to time be entitled to." *June 8*

Paterson: Moved that the Committee resume the clause relating to the rule of suffrage in the national legislature. *June 9*

Brearley: Seconds him. He was sorry, he said, that any question on this point was brought into view. It had been much agitated in Congress at the time of forming the Confederation, and was then rightly settled by allowing to each sovereign state an equal vote. Otherwise, the smaller states must have been destroyed instead of being saved. The substitution of a ratio, he admitted, carried fairness on the face of it; but on a

deeper examination was unfair and unjust. Judging of the disparity of the states by the quota of Congress, Virginia would have sixteen votes and Georgia but one. A like proportion to the others will make the whole number ninety. There will be three large states and ten small ones. The large states, by which he meant Massachusetts, Pennsylvania, and Virginia, will carry everything before them. It had been admitted, and was known to him from facts within New Jersey, that where large and small counties were united into a district for electing representatives for the district, the large counties always carried their point, and consequently the states would do so. Virginia with her sixteen votes will be a solid column indeed, a formidable phalanx. While Georgia with her solitary vote, and the other little states, will be obliged to throw themselves constantly into the scale of some large one in order to have any weight at all. He had come to the Convention with a view of being as useful as he could in giving energy and stability to the federal government. When the proposition for destroying the equality of votes came forward, he was astonished, he was alarmed. Is it fair, then, it will be asked, that Georgia should have an equal vote with Virginia? He would not say it was. What remedy, then? One only, that a map of the United States be spread out, that all the existing boundaries be erased, and that a new partition of the whole be made into thirteen equal parts.

Paterson: Considered the proposition for a proportional representation as striking at the existence of the lesser states. He would premise, however, to an investigation of this question, some remarks on the nature, structure, and powers of the Convention. The Convention, he said, was formed in pursuance of an act of Congress; that this act was recited in several of the commissions, particularly that of Massachusetts, which he required to be read; that the amendment of the Confederacy was the object of all the laws and commissions on the subject; that the Articles of the Confederation were therefore the proper basis of all the proceedings of the Convention; that we ought to keep within its limits, or we should be charged

by our constituents with usurpation; that the people of America were sharp-sighted and not to be deceived. But the commissions under which we acted were not only the measure of our power, they denoted also the sentiments of the states on the subject of our deliberation. The idea of a national government, as contradistinguished from a federal one, never entered into the mind of any of them; and to the public mind we must accommodate ourselves. We have no power to go beyond the federal scheme; and if we had, the people are not ripe for any other. We must follow the people; the people will not follow us. The *proposition* could not be maintained, whether considered in reference to us as a nation or as a confederacy. A confederacy supposes sovereignty in the members composing it and sovereignty supposes equality. If we are to be considered as a nation, all state distinctions must be abolished, the whole must be thrown into hotchpot, and when an equal division is made, then there may be fairly an equality of representation. He held up Virginia, Massachusetts, and Pennsylvania as the three large states, and the other ten as small ones; repeating the calculations of Mr. Brearley as to the disparity of votes which would take place, and affirming that the small states would never agree to it. He said there was no more reason that a great individual state, contributing much, should have more votes than a small one, contributing little; than that a rich individual citizen should have more votes than an indigent one. If the rateable property of A was to that of B as forty to one, ought A for that reason to have forty times as many votes as B? Such a principle would never be admitted; and if it were admitted would put B entirely at the mercy of A. As A has more to be protected than B, so he ought to contribute more for the common protection. The same may be said of a large state, which has more to be protected than a small one. Give the large states an influence in proportion to their magnitude, and what will be the consequence? Their ambition will be proportionally increased, and the small states will have everything to fear. It was once proposed by Galloway, and some others, that America should be

represented in the British Parliament, and then be bound by its laws. America could not have been entitled to more than one-third of the representatives which would fall to the share of Great Britain—would American rights and interests have been safe under an authority thus constituted? It has been said that if a national government is to be formed, so as to operate on the people and not on the states, the representatives ought to be drawn from the people. But why so? May not a legislature, filled by the state legislatures, operate on the people who choose the state legislatures? Or may not a practicable coercion be found? He admitted that there were none such in the existing system. He was attached strongly to the plan of the existing Confederacy, in which the people choose their legislative representatives; and the legislatures their federal representatives. No other amendments were wanting than to mark the orbits of the states with due precision, and provide for the use of coercion, which was the great point. He alluded to the hint thrown out by Mr. Wilson, of the necessity to which the large states might be reduced, of confederating among themselves by a refusal of the others to concur. Let them unite if they please, but let them remember that they have no authority to compel the others to unite. New Jersey will never confederate on the plan before the Committee. She would be swallowed up. He had rather submit to a monarch, to a despot, than to such a fate. He would not only oppose the plan here, but on his return home do everything in his power to defeat it there.

Wilson: Hoped, if the Confederacy should be dissolved, that a *majority*—nay, a *minority* of the states would unite for their safety. He entered elaborately into the defense of a proportional representation, stating for his first position, that, as all authority was derived from the people, equal numbers of people ought to have an equal number of representatives, and different numbers of people, different numbers of representatives. This principle had been improperly violated in the Confederation, owing to the urgent circumstances of the time.

As to the case of A and B stated by Mr. Paterson, he observed that in districts as large as the states, the number of people was the best measure of their comparative wealth. Whether, therefore, wealth or numbers was to form the ratio, it would be the same. Mr. Paterson admitted persons, not property, to be the measure of suffrage. Are not the citizens of Pennsylvania equal to those of New Jersey? Does it require one hundred and fifty of the former to balance fifty of the latter? Representatives of different districts ought clearly to hold the same proportion to each other as their respective constituents hold to each other. If the small states will not confederate on this plan, Pennsylvania, and he presumed some other states, would not confederate on any other. We have been told that each state being sovereign, all are equal. So each man is naturally a sovereign over himself, and all men are therefore naturally equal. Can he retain this equality when he becomes a member of civil government? He cannot. As little can a sovereign state, when it becomes a member of a federal government. If New Jersey will not part with her sovereignty, it is vain to talk of government. A new partition of the states is desirable, but evidently and totally impracticable.

Williamson: Illustrated the cases by a comparison of the different states to counties of different sizes within the same state; observing that proportional representation was admitted to be just in the latter case, and could not, therefore, be fairly contested in the former.

The question being about to be put, Mr. Paterson hoped that as so much depended on it, it might be thought best to postpone the decision till tomorrow; which was done, *nem. con.*

Sherman: Proposed that the proportion of suffrage in the first branch should be according to the respective numbers of free inhabitants; and that in the second branch, or Senate, each state should have one vote and no more. He said, as the states would remain possessed of certain individual rights, each state ought to be able to protect itself, otherwise a few large states will rule the rest. The House of Lords in England, he ob-

June 11



served, had certain particular rights under the constitution, and hence they have an equal vote with the House of Commons, that they may be able to defend their rights.

Rutledge: Proposed that the proportion of suffrage in the first branch should be according to the quotas of contribution. The justice of this rule, he said, could not be contested.

Butler: Urged the same idea; adding that money was power, and that the states ought to have weight in the government in proportion to their wealth.

King and Wilson: In order to bring the question to a point, moved "that the right of suffrage in the first branch of the national legislature ought not to be according to the rule established in the Articles of Confederation but according to some equitable ratio of representation." The clause, so far as it related to suffrage in the first branch, was postponed, in order to consider this motion.

Dickinson: Contended for the *actual* contributions of the states, as the rule of their representation and suffrage in the first branch. By thus connecting the interests of the states with their duty, the latter would be sure to be performed.

King: Remarked that it was uncertain what mode might be used in levying a national revenue; but that it was probable imposts would be one source of it. If the *actual* contributions were to be the rule, the non-importing states, as Connecticut and New Jersey, would be in a bad situation, indeed. It might so happen that they would have no representation. This situation of particular states had been always one powerful argument in favor of the five *per cent* impost.

The question being about to be put, Dr. Franklin said he had thrown his ideas of the matter on a paper, which Mr. Wilson read to the Committee, in the words following:

"Mr. Chairman: It has given me great pleasure to observe that, till this point, the proportion of representation, came before us, our debates were carried on with great coolness and temper. If anything of a contrary kind has on this occasion appeared, I hope it will not be repeated; for we are sent here to *consult*, not to *contend*, with each other; and declarations

of a fixed opinion, and of determined resolution never to change it, neither enlighten nor convince us. Positiveness and warmth on one side naturally beget their like on the other, and tend to create and augment discord and division, in a great concern wherein harmony and union are extremely necessary to give weight to our councils, and render them effectual in promoting and securing the common good.

"I must own that I was originally of opinion it would be better if every member of Congress, or our national council, were to consider himself rather as a representative of the whole than as an agent for the interests of a particular state; in which case the proportion of members for each state would be of less consequence, and it would not be very material whether they voted by states or individually. But as I find this is not to be expected, I now think the number of representatives should bear some proportion to the number of the represented; and that the decisions should be by the majority of members, not by the majority of the states. This is objected to from an apprehension that the greater states would then swallow up the smaller. I do not at present clearly see what advantage the greater states could propose to themselves by swallowing up the smaller, and therefore do not apprehend they would attempt it. I recollect that, in the beginning of this century, when the union was proposed of the two kingdoms, England and Scotland, the Scotch patriots were full of fears that unless they had an equal number of representatives in Parliament, they should be ruined by the superiority of the English. They finally agreed, however, that the different proportions of importance in the union of the two nations should be attended to, whereby they were to have only forty members in the House of Commons, and only sixteen in the House of Lords. A very great inferiority of members! And yet to this day I do not recollect that anything has been done in the Parliament of Great Britain to the prejudice of Scotland; and whoever looks over the lists of public officers, civil and military, of that nation, will find, I believe, that the North Britons enjoy at least their full proportion of emolument.

“But, sir, in the present mode of voting by states, it is equally in the power of the lesser states to swallow up the greater; and this is mathematically demonstrable. Suppose, for example, that seven smaller states had each three members in the House, and the six larger to have one with another six members, and that, upon a question, two members of each smaller state should be in the affirmative, and one in the negative, they would make: affirmatives, 14; negatives, 7; and that all the larger states should be unanimously in the negative, they would make, negatives 36; in all, affirmatives, 14, negatives 43.

“It is, then, apparent that the fourteen carry the question against the forty-three, and the minority overpowers the majority, contrary to the common practice of assemblies in all countries and ages.

“The greater states, sir, are naturally as unwilling to have their property left in the disposition of the smaller as the smaller are to have theirs in the disposition of the greater. An honorable gentleman has, to avoid this difficulty, hinted a proposition of equalizing the states. It appears to me an equitable one, and I should, for my own part, not be against such a measure if it might be found practicable. Formerly, indeed, when almost every province had a different constitution, some with greater, others with fewer privileges, it was of importance to the borderers, when their boundaries were contested, whether, by running the division lines, they were placed on one side or the other. At present, when such differences are done away, it is less material. The interest of a state is made up of the interests of its individual members. If they are not injured, the state is not injured. Small states are more easily well and happily governed than large ones. If, therefore, in such an equal division, it should be found necessary to diminish Pennsylvania, I should not be averse to the giving a part of it to New Jersey, and another to Delaware. But as there would probably be considerable difficulties in adjusting such a division; and, however equally made at first, it would be continually varying by the augmentation of inhabitants

in some states, and their fixed proportion in others, and thence frequently occasion new divisions, I beg leave to propose, for the consideration of the Committee, another mode, which appears to me to be as equitable, more easily carried into practice, and more permanent in its nature.

“Let the weakest state say what proportion of money or force it is able and willing to furnish for the general purposes of the Union:

“Let all the others oblige themselves to furnish each an equal proportion:

“The whole of these joint supplies to be absolutely in the disposition of Congress:

“The Congress in this case to be composed of an equal number of delegates from each state:

“And their decisions to be by the majority of individual members voting.

“If these joint and equal supplies should, on particular occasions, not be sufficient, let Congress make requisitions on the richer and more powerful states for further aids, to be voluntarily afforded, leaving to each state the right of considering the necessity and utility of the aid desired, and of giving more or less as it should be found proper.

“This mode is not new. It was formerly practiced with success by the British government with respect to Ireland and the Colonies. We sometimes gave even more than they expected, or thought just to accept; and in the last war, carried on while we were united, they gave us back in five years a million sterling. We should probably have continued such voluntary contributions whenever the occasions appeared to require them for the common good of the Empire. It was not till they chose to force us, and to deprive us of the merit and pleasure of voluntary contributions, that we refused and resisted. These contributions, however, were to be disposed of at the pleasure of a government in which we had no representative. I am, therefore, persuaded that they will not be refused to one in which the representation shall be equal.

“My learned colleague (Mr. Wilson) has already mentioned

that the present method of voting by states was submitted to originally by Congress under a conviction of its impropriety, inequality, and injustice. This appears in the words of their resolution. It is of the sixth of September, 1774. The words are:

“ ‘Resolved, that in determining questions in this Congress, each colony or province shall have one vote; the Congress not being possessed of, or at present able to procure, materials for ascertaining the importance of each colony.’ ”

On the question for agreeing to King's and Wilson's motion, it passed in the affirmative: Yeas 7 (Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia); nays 3 (New York, New Jersey, Delaware); divided 1 (Maryland).

Rutledge: Moved to add to the words “equitable ratio of representation” at the end of the motion just agreed to, the words “according to the quotas of contribution.”

Butler: Seconded the motion.

Wilson and C. Pinckney: Moved to postpone the above motion, in order to add, after the words “equitable ratio of representation,” the words following: “in proportion to the whole number of white and other free citizens and inhabitants of every age, sex and condition, including those bound to servitude for a term of years, and three-fifths of all other persons not comprehended in the foregoing description, except Indians not paying taxes, in each state,” this being the rule in the act of Congress, agreed to by eleven states, for apportioning quotas of revenue on the states, and requiring a census only every five, seven, or ten years.

Gerry: Thought property not the rule of representation. Why, then, should the blacks, who were property in the South, be in the rule of representation more than the cattle and horses of the North?

On the question: Yeas 9 (Massachusetts, Connecticut, New York, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia); nays 2 (New Jersey, Delaware).

Sherman: Moved that a question be taken, whether each state

shall have one vote in the second branch. Everything, he said, depended on this. The smaller states would never agree to the plan on any other principle than an equality of suffrage in this branch.

Ellsworth: Seconded the motion.

On the question for allowing each state one vote in the second branch: Yeas 5 (Connecticut, New York, New Jersey, Delaware, Maryland); nays 6 (Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia).

Wilson and Hamilton: Moved that the right of suffrage in the second branch ought to be according to the same rule as in the first branch.

On this question for making the ratio of representation the same in the second as in the first branch, it passed in the affirmative: Yeas 6 (Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia); nays 5 (Connecticut, New York, New Jersey, Delaware, Maryland).

**Fundamentals in Convention.** Resolved, that the rights of suffrage in the first branch of the national legislature ought not to be according to the rule established in the Articles of Confederation, but according to some equitable ratio of representation, namely, in proportion to the whole number of white and other free citizens and inhabitants, of every age, sex and condition, including those bound to servitude for a term of years, and three-fifths of all other persons, not comprehended in the foregoing description, except Indians not paying taxes, in each state. Seventh resolution, Committee of the Whole.

*June 19*

Resolved, that the right of suffrage in the second branch of the national legislature ought to be according to the rule established for the first. Eighth resolution, Committee of the Whole.

L. Martin: Contended, at great length, and with great eagerness, that the general government was meant merely to preserve the state governments, not to govern individuals. That its powers ought to be kept within narrow limits. That if too little power was given to it, more might be added; but that if

*June 27*

too much, it could never be resumed. That individuals, as such, have little to do but with their own states; that the general government has no more to apprehend from the states composing the Union, while it pursues proper measures, than a government over individuals has to apprehend from its subjects. That to resort to the citizens at large for their sanction to a new government will be throwing them back into a state of nature; that the dissolution of the state governments is involved in the nature of the process; that the people have no right to do this without the consent of those to whom they have delegated their power for state purposes. Through their tongues only they can speak, through their ears only can hear. That the states have shewn a good disposition to comply with the acts of Congress, weak, contemptibly weak, as that body has been; and have failed through inability alone to comply. That the heaviness of the private debts, and the waste of property during the war were the chief causes of this inability—that he did not conceive the instances mentioned by Mr. Madison of compacts between Virginia and Maryland, between Pennsylvania and New Jersey, or of troops raised by Massachusetts for defense against the rebels, to be violations of the Articles of Confederation. That an equal vote in each state was essential to the federal idea, and was founded in justice and freedom, not merely in policy. That though the states may give up this right of sovereignty, yet they had not, and ought not. That the states, like individuals, were in a state of nature equally sovereign and free. In order to prove that individuals in a state of nature are equally free and independent, he read passages from Locke, Vattel, Lord Somers, Priestley. To prove that the case is the same with states, till they surrender their equal sovereignty, he read other passages in Locke and Vattel, and also Rutherford. That the states, being equal, cannot treat or confederate so as to give up an equality of votes without giving up their liberty. That the propositions on the table were a system of slavery for ten states. That as Virginia, Massachusetts, and Pennsylvania have forty-two ninetieths of the votes, they can do as they please, without

a miraculous union of the other ten. That they will have nothing to do but to gain over one of the ten, to make them complete masters of the rest; that they can then appoint an executive and judiciary and legislature for them, as they please. That there was, and would continue, a national predilection and partiality in men for their own states; that the states, particularly the smaller, would never allow a negative to be exercised over their laws; that no state, in ratifying the Confederation, had objected to the equality of votes; that the complaints at present ran not against this equality, but the want of power. That sixteen members from Virginia would be more likely to act in concert than a like number formed of members from different states. That instead of a junction of the small states as a remedy, he thought a division of the large states would be more eligible. This was the substance of a speech which was continued more than three hours. He was too much exhausted, he said, to finish his remarks, and reminded the House that he should tomorrow resume them.

- L. Martin: Resumed his discourse, contending that the general government ought to be formed for the states, not for individuals; that if the states were to have votes in proportion to their numbers of people, it would be the same thing whether their representatives were chosen by the legislatures or the people; the smaller states would be equally enslaved. That if the large states have the same interest with the smaller, as was urged, there could be no danger in giving them an equal vote; they would not injure themselves, and they could not injure the large ones, on that supposition, without injuring themselves; and if the interests were not the same, the inequality of suffrage would be dangerous to the smaller states. That it will be in vain to propose any plan offensive to the rulers of the states, whose influence over the people will certainly prevent their adopting it. That the large states were weak at present in proportion to their extent; and could only be made formidable to the small ones by the weight of their votes. That in case a dissolution of the Union should take place, the small states would have nothing to fear from their power; that if,
- June 28*



in such a case, the three great states should league themselves together, the other ten could do so too; and that he had rather see partial confederacies take place than the plan on the table. This was the substance of the residue of his discourse, which was delivered with much diffuseness and considerable vehemence.

Lansing and Dayton: Moved to strike out "not" so that the seventh article might read, "that the right of suffrage in the first branch ought to be according to the rule established by the Confederation."

Dayton: Expressed great anxiety that the question might not be put till tomorrow, Governor Livingston being kept away by indisposition, and the representation of New Jersey thereby suspended.

Williamson: Thought that, if any political truth could be grounded on mathematical demonstration, it was that if the states were equally sovereign now, and parted with equal proportions of sovereignty, that they would remain equally sovereign. He could not comprehend how the smaller states would be injured in the case, and wished some gentleman would vouchsafe a solution of it. He observed that the small states, if they had a plurality of votes, would have an interest in throwing the burdens off their own shoulders on those of the large ones. He begged that the expected addition of new states from the westward might be taken into view. They would be small states; they would be poor states; they would be unable to pay in proportion to their numbers, their distance from market rendering the produce of their labor less valuable; they would consequently be tempted to combine for the purpose of laying burdens on commerce and consumption which would fall with greater weight on the old states.

Madison: Said he was much disposed to concur in any expedient, not inconsistent with fundamental principles, that could remove the difficulty concerning the rule of representation. But he could neither be convinced that the rule contended for was just, nor that it was necessary for the safety of the small states against the large states. That it was not just had been conceded

by Mr. Brearley and Mr. Paterson themselves. The expedient proposed by them was a new partition of the territory of the United States. The fallacy of the reasoning drawn from the equality of sovereign states, in the formation of compacts, lay in confounding mere treaties, in which were specified certain duties to which the parties were to be bound, and certain rules by which their subjects were to be reciprocally governed in their intercourse, with a compact by which an authority was created paramount to the parties, and making laws for the government of them. If France, England, and Spain were to enter into a treaty for the regulation of commerce, etc., with the Prince of Monacho, and four or five other of the smallest sovereigns of Europe, they would not hesitate to treat as equals, and to make the regulations perfectly reciprocal. Would the case be the same if a council were to be formed of deputies from each, with authority and discretion to raise money, levy troops, determine the value of coin, etc.? Would thirty or forty millions of people submit their fortunes into the hands of a few thousands? If they did, it would only prove that they expected more from the terror of their superior force than they feared from the selfishness of their feeble associates. Why are counties of the same states represented in proportion to their numbers? Is it because the representatives are chosen by the people themselves? So will be the representatives in the national legislature. Is it because the larger have more at stake than the smaller? The case will be the same with the larger and smaller states. Is it because the laws are to operate immediately on their persons and properties? The same is the case, in some degree, as the Articles of Confederation stand; the same will be the case, in a far greater degree, under the plan proposed to be substituted. In the cases of captures, of piracies, and of offenses in a federal army, the property and persons of individuals depend on the laws of Congress. By the plan proposed, a complete power of taxation, the highest prerogative of supremacy, is proposed to be vested in the national government. Many other powers are added which assimilate it to the government of individual states. The negative proposed

on the state laws will make it an essential branch of the state legislatures, and of course will require that it should be exercised by a body, established on like principles with the branches of those legislatures. That it is not necessary to secure the small states against the large ones, he conceived to be equally obvious. Was a combination of the large ones dreaded? This must arise either from some interest common to Virginia, Massachusetts, and Pennsylvania, and distinguishing them from the other states; or from the mere circumstance of similarity of size. Did any such common interest exist? In point of situation, they could not have been more effectually separated from each other by the most jealous citizen of the most jealous states. In point of manners, religion, and the other circumstances which sometimes beget affection between different communities, they were not more assimilated than the other states. In point of the staple productions, they were as dissimilar as any three other states in the Union. The staple of Massachusetts was *fish*, of Pennsylvania *flour*, of Virginia *tobacco*. Was a combination to be apprehended from the mere circumstance of equality of size? Experience suggested no such danger. The journals of Congress did not present any peculiar association of these states in the votes recorded. It had never been seen that different counties in the same state, conformable in extent, but disagreeing in other circumstances, betrayed a propensity to such combinations. Experience rather taught a contrary lesson. Among individuals of superior eminence and weight in society, rivalships were much more frequent than coalitions. Among independent nations, pre-eminent over their neighbors, the same remark was verified. Carthage and Rome tore one another to pieces instead of uniting their forces to devour the weaker nations of the earth. The houses of Austria and France were hostile as long as they remained the greatest powers of Europe. England and France have succeeded to the pre-eminence and to the enmity. To this principle we owe perhaps our liberty. A coalition between those powers would have been fatal to us. Among the principal members of the ancient and modern confederacies, we find

the same effect from the same cause. The contentions, not the coalitions, of Sparta, Athens, and Thebes, proved fatal to the smaller members of the Amphictyonic confederacy. The contentions, not the combinations, of Russia and Austria have distracted and oppressed the German Empire. Were the large states formidable, *singly*, to their smaller neighbors? On this supposition, the latter ought to wish for such a general government as will operate with equal energy on the former as on themselves. The more lax the band, the more liberty the larger will have to avail themselves of their superior force. Here again, experience was an instructive monitor. What is the situation of the weak compared with the strong, in those stages of civilization in which the violence of individuals is least controlled by an efficient government? The heroic period of ancient Greece, the feudal licentiousness of the middle ages of Europe, the existing condition of the American savages, answer this question. What is the situation of the minor sovereigns in the great society of independent nations, in which the more powerful are under no control but the nominal authority of the law of nations? Is not the danger to the former exactly in proportion to their weakness? But there are cases still more in point. What was the condition of the weaker members of the Amphictyonic confederacy? Plutarch (see "Life of Themistocles") will inform us that it happened but too often, that the strongest cities corrupted and awed the weaker, and that judgment went in favor of the more powerful party. What is the condition of the lesser states in the German confederacy? We all know that they are exceedingly trampled upon, and that they owe their safety, as far as they enjoy it, partly to their enlisting themselves under the rival banners of the pre-eminent members, partly to alliances with neighboring princes, which the constitution of the Empire does not prohibit. What is the state of things in the lax system of the Dutch confederacy? Holland contains about half the people, supplies about half the money, and by her influence silently and indirectly governs the whole republic. In a word, the two extremes before us are a perfect separation and a perfect

incorporation of the thirteen states. In the first case, they would be independent nations, subject to no law but the law of nations. In the last they would be mere counties of one entire republic, subject to one common law. In the first case, the smaller states would have everything to fear from the larger. In the last they would have nothing to fear. The true policy of the small states, therefore, lies in promoting those principles, and that form of government, which will most approximate the states to the condition of counties. Another consideration may be added. If the general government be feeble, the larger states, distrusting its continuance, and foreseeing that their importance and security may depend on their own size and strength, will never submit to a partition. Give to the general government sufficient energy and permanency, and you remove the objection. Gradual partitions of the large, and junctions of the small states, will be facilitated, and time may effect that equalization which is wished for by the small states now, but can never be accomplished at once.

Wilson: The leading argument of those who contend for equality of votes among the states is that the states, as such, being equal, and being represented, not as districts of individuals, but in their political and corporate capacities, are entitled to an equality of suffrage. According to this mode of reasoning, the representation of the boroughs in England, which has been allowed on all hands to be the rotten part of the constitution, is perfectly right and proper. They are, like the states, represented in their corporate capacity; like the states, therefore, they are entitled to equal voices— Old Sarum to as many as London. And instead of the injury supposed hitherto to be done to London, the true ground of complaint lies with Old Sarum, for London instead of two, which is her proper share, sends four representatives to Parliament.

Sherman: The question is not what rights naturally belong to man, but how they may be most equally and effectually guarded in society. And if some give up more than others, in order to obtain this end, there can be no room for complaint. To do otherwise, to require an equal concession from all, if it

would create danger to the rights of some, would be sacrificing the end to the means. The rich man who enters into society along with the poor man gives up more than the poor man, yet with an equal vote he is equally safe. Were he to have more votes than the poor man, in proportion to his superior stake, the rights of the poor man would immediately cease to be secure. This consideration prevailed when the Articles of Confederation were formed.

Johnson: The controversy must be endless whilst gentlemen differ in the grounds of their arguments; those on one side considering the states as districts of people composing one political society: those on the other considering them as so many political societies. The fact is that the states do exist as political societies, and a government is to be formed for them in their political capacity, as well as for the individuals composing them. Does it not seem to follow that if the states, as such, are to exist, they must be armed with some power of self-defense? This is the idea of Col. Mason, who appears to have looked to the bottom of this matter. Besides the aristocratic and other interests, which ought to have the means of defending themselves, the states have their interests as such, and are equally entitled to like means. On the whole he thought that, as in some respects the states are to be considered in their political capacity, and in others as districts of individual citizens, the two ideas embraced on different sides, instead of being opposed to each other, ought to be combined; that in *one* branch the *people* ought to be represented, in the *other* the *states*.

June 29

Gorham: The states, as now confederated, have no doubt a right to refuse to be consolidated, or to be formed into any new system. But he wished the small states, which seemed most ready to object, to consider which are to give up most, they or the larger ones. He conceived that a rupture of the Union would be an event unhappy for all; but surely the large states would be least unable to take care of themselves and to make connections with one another. The weak, therefore, were most interested in establishing some general system for maintaining order. If, among individuals composed partly of

weak and partly of strong, the former most need the protection of law and government, the case is exactly the same with weak and powerful states. What would be the situation of Delaware (for these things he found must be spoken out, and it might as well be done at first as last), what would be the situation of Delaware in case of a separation of the states? Would she not be at the mercy of Pennsylvania? Would not her true interest lie in being consolidated with her: and ought she not now to wish for such a union with Pennsylvania, under one government, as will put it out of the power of Pennsylvania to oppress her? Nothing can be more ideal than the danger apprehended by the states from their being formed into one nation. Massachusetts was originally three colonies, viz., old Massachusetts, Plymouth, and the Province of Maine. These apprehensions existed then. An incorporation took place; all parties were safe and satisfied; and every distinction is now forgotten. The case was similar with Connecticut and New Haven. The dread of union was reciprocal; the consequence of it equally salutary and satisfactory. In like manner, New Jersey has been made one society out of two parts. Should a separation of the states take place, the fate of New Jersey would be worst of all. She has no foreign commerce, and can have but little. Pennsylvania and New York will continue to levy taxes on her consumption. If she consults her interest, she would beg of all things to be annihilated. The apprehensions of the small states ought to be appeased by another reflection. Massachusetts will be divided. The Province of Maine is already considered as approaching the term of its annexation to it: and Pennsylvania will probably not increase, considering the present state of her population, and other events that may happen. On the whole, he considered a union of the states as necessary to their happiness, and a firm general government as necessary to their union. He should consider it his duty, if his colleagues viewed the matter in the same light he did, to stay here as long as any other state would remain with them, in order to agree on some plan that could, with propriety, be recommended to the people.

Ellsworth: Did not despair. He still trusted that some good plan of government would be devised and adopted.

Read: He should have no objection to the system if it were truly national, but it has too much of a federal mixture in it. The little states, he thought, had not much to fear. He suspected that the large states felt their want of energy, and wished for a general government to supply the defect. Massachusetts was evidently laboring under her weakness, and he believed Delaware would not be in much danger if in her neighborhood. Delaware had enjoyed tranquillity, and he flattered himself would continue to do so. He was not, however, so selfish as not to wish for a good general government. In order to obtain one, the whole states must be incorporated. If the states remain, the representatives of the large ones will stick together and carry everything before them. The executive, also, will be chosen under the influence of this partiality, and will betray it in his administration. These jealousies are inseparable from the scheme of leaving the states in existence. They must be done away. The ungranted lands, also, which have been assumed by particular states, must be given up. He repeated his approbation of the plan of Mr. Hamilton, and wished it to be substituted for that on the table.

Madison: Agreed with Dr. Johnson that the mixed nature of the government ought to be kept in view, but thought too much stress was laid on the rank of the states as political societies. There was a gradation, he observed, from the smallest corporation, with the most limited powers, to the largest empire, with the most perfect sovereignty. He pointed out the limitations on the sovereignty of the states, as now confederated. Their laws, in relation to the paramount law of the Confederacy, were analogous to that of by-laws to the supreme law within a state. Under the proposed government, the powers of the states will be much farther reduced. According to the views of every member, the general government will have powers far beyond those exercised by the British Parliament when the states were part of the British Empire. It will, in particular, have the power, without the consent of the state



legislatures, to levy money directly from the people themselves; and therefore, not to divest such *unequal* portions of the people as composed the several states of an *equal* voice would subject the system to the reproaches and evils which have resulted from the vicious representation in Great Britain.

He entreated the gentlemen representing the small states to renounce a principle which was confessedly unjust; which could never be admitted; and which, if admitted, must infuse mortality into a Constitution which we wished to last forever. He prayed them to ponder well the consequences of suffering the Confederacy to go to pieces. It had been said that the want of energy in the large states would be a security to the small. It was forgotten that this want of energy proceeded from the supposed security of the states against all external danger. Let each state depend on itself for its security, and let apprehensions arise of danger from distant powers or from neighboring states, and the languishing condition of all the states, large as well as small, would soon be transformed into vigorous and high-toned governments. His great fear was that their governments would then have too much energy; that this might not only be formidable in the large to the small states, but fatal to the internal liberty of all. The same causes which have rendered the old world the theatre of incessant wars, and have banished liberty from the face of it, would soon produce the same effects here. The weakness and jealousy of the small states would quickly introduce some regular military force against sudden danger from their powerful neighbors. The example would be followed by others, and would soon become universal. In time of actual war, great discretionary powers are constantly given to the executive magistrate. Constant apprehension of war has the same tendency to render the head too large for the body. A standing military force, with an overgrown executive, will not long be safe companions to liberty. The means of defense against foreign danger have been always the instruments of tyranny at home. Among the Romans it was a standing maxim to excite a war whenever a revolt was apprehended. Throughout all Europe, the armies

kept up under the pretext of defending have enslaved the people. It is, perhaps, questionable whether the best concerted system of absolute power in Europe could maintain itself in a situation where no alarms of external danger could tame the people to the domestic yoke. The insular situation of Great Britain was the principal cause of her being an exception to the general fate of Europe. It has rendered less defense necessary and admitted a kind of defense which could not be used for the purpose of oppression. These consequences, he conceived ought to be apprehended, whether the states should run into a total separation from each other or should enter into partial confederacies. Either event would be truly deplorable; and those who might be accessory to either could never be forgiven by their country, nor by themselves.

Hamilton: Observed that individuals forming political societies modify their rights differently with regard to suffrage. Examples of it are found in all the states. In all of them, some individuals are deprived of the right altogether, not having the requisite qualification of property. In some of the states, the right of suffrage is allowed in some cases and refused in others. To vote for a member in one branch, a certain quantum of property; to vote for a member in another branch of the legislature, a higher quantum of property is required. In like manner, states may modify their right of suffrage differently, the larger exercising a larger, the smaller a smaller share of it. But as states are a collection of individual men, which ought we to respect most, the rights of the people composing them or of the artificial beings resulting from the composition? Nothing could be more preposterous or absurd than to sacrifice the former to the latter. It has been said that if the smaller states renounce their *equality*, they renounce at the same time their *liberty*. The truth is, it is a contest for power, not for liberty. Will the men composing the small states be less free than those composing the larger? The state of Delaware, having forty thousand souls, will lose *power* if she has one-tenth only of the votes allowed to Pennsylvania, having four hundred thousand; but will the people of Delaware *be less free*

if each citizen has an equal vote with each citizen of Pennsylvania? He admitted that common residence within the same state would produce a certain degree of attachment; and that this principle might have a certain influence on public affairs. He thought, however, that this might, by some precautions, be in a great measure excluded; and that no material inconvenience could result from it; as there could not be any ground for combination among the states whose influence was most dreaded. The only considerable distinction of interests lay between the carrying and non-carrying states, which divides instead of uniting the largest states. No considerable inconvenience had been found from the division of the state of New York into different districts of different sizes.

Some of the consequences of a dissolution of the Union, and the establishment of partial confederacies had been pointed out. He would add another of a most serious nature. Alliances will immediately be formed with different rival and hostile nations of Europe, who will foment disturbances among ourselves and make us parties to all their own quarrels. Foreign nations having American dominion are, and must be, jealous of us. Their representatives betray the utmost anxiety for our fate, and for the result of this meeting, which must have an essential influence on it. It had been said that respectability in the eyes of foreign nations was not the object at which we aimed; that the proper object of republican government was domestic tranquillity and happiness. This was an ideal distinction. No government could give us tranquillity and happiness at home which did not possess sufficient stability and strength to make us respectable abroad. This was the critical moment for forming such a government. We should run every risk in trusting to future amendments. As yet we retain the habits of union. We are weak, and sensible of our weakness. Henceforward, the motives will become feebler, and the difficulties greater. It is a miracle that we are now here, exercising our tranquil and free deliberations on the subject. It would be madness to trust to future miracles. A thousand causes must obstruct a reproduction of them.

Pierce: Considered the equality of votes under the Confederation as the great source of the public difficulties. The members of Congress were advocates for local advantages. State distinctions must be sacrificed, as far as the general good required, but without destroying the states. Though from a small state, he felt himself a citizen of the United States.

Gerry: Urged that we never were independent states, were not such now, and never could be, even on the principles of the Confederation. The states, and the advocates for them, were intoxicated with the idea of their *sovereignty*. He was a member of Congress at the time the federal Articles were formed. The injustice of allowing each state an equal vote was long insisted on. He voted for it but it was against his judgment, and under the pressure of public danger and the obstinacy of the lesser states. The present Confederation he considered as dissolving. The fate of the Union will be decided by the Convention. If they do not agree on something, few delegates will probably be appointed to Congress. If they do, Congress will probably be kept up till the new system should be adopted. He lamented that, instead of coming here like a band of brothers, belonging to the same family, we seem to have brought with us the spirit of political negotiators.

L. Martin: Remarked that the language of the states being *sovereign and independent* was once familiar and understood; though it seemed now so strange and obscure. He read those passages in the Articles of Confederation which describe them in that language.

On the question, as moved by Lansing, shall the word "not" be struck out?: Yeas 4 (Connecticut, New York, New Jersey, Delaware); nays 6 (Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia); divided 1 (Maryland).

On the motion to agree to the clause as reported, "that the rule of suffrage in the first branch ought not to be according to that established by the Articles of the Confederation": Yeas 6 (Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia); nays 4 (Connecticut, New York, New Jersey, Delaware); divided 1 (Maryland).

Johnson and Ellsworth: Moved to postpone the residue of the clause and take up the eighth resolution.

On the question: Yeas 9 (Connecticut, New York, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia); nays 2 (Massachusetts, Delaware).

CHAPTER 9  
REPRESENTATION IN THE FEDERAL  
LEGISLATURE—*Continued*

REPRESENTATION IN THE SENATE

**Fundamentals in Convention.** Ellsworth: Moved "that the rule of suffrage in the second branch be the same with that established by the Articles of Confederation." He was not sorry on the whole, he said, that the vote just passed had determined against this rule in the first branch. He hoped it would become a ground of compromise with regard to the second branch. We were partly national, partly federal. The proportional representation in the first branch was conformable to the national principle, and would secure the large states against the small. An equality of voices was conformable to the federal principle, and was necessary to secure the small states against the large. He trusted that on this middle ground a compromise would take place. He did not see that it could on any other, and if no compromise should take place, our meeting would not only be in vain but worse than in vain. To the eastward, he was sure Massachusetts was the only state that would listen to a proposition for excluding the states, as equal political societies, from an equal voice in both branches. The others would risk every consequence rather than part with so dear a right. An attempt to deprive them of it was at once cutting the body of America in two, and, as he supposed would be the case, somewhere about this part of it. The large states he conceived would, notwithstanding the equality of votes, have an influence that would maintain their superiority. Hol-

*June 29*

land, as had been admitted (by Mr. Madison), had, notwithstanding a like equality in the Dutch confederacy, a prevailing influence in the public measures. The power of self-defense was essential to the small states. Nature had given it to the smallest insect of the creation. He could never admit that there was no danger of combinations among the large states. They will, like individuals, find out and avail themselves of the advantage to be gained by it. It was true the danger would be greater if they were contiguous and had a more immediate and common interest. A defensive combination of the small states was rendered more difficult by their greater number. He would mention another consideration of great weight. The existing Confederation was founded on the equality of the states in the article of suffrage—was it meant to pay no regard to this antecedent plighted faith? Let a strong executive, a judiciary, and legislative power be created, but let not too much be attempted, by which all may be lost. He was not in general a half-way man, yet he preferred doing half the good we could rather than do nothing at all. The other half may be added when the necessity shall be more fully experienced.

Baldwin: Could have wished that the powers of the general legislature had been defined before the mode of constituting it had been agitated. He should vote against the motion of Mr. Ellsworth, though he did not like the resolution as it stood in the report of the Committee of the Whole. He thought the second branch ought to be the representation of property, and that, in forming it, therefore, some reference ought to be had to the relative wealth of their constituents, and to the principles on which the senate of Massachusetts was constituted. He concurred with those who thought it would be impossible for the general legislature to extend its cares to the local matters of the states.

*June 30* Wilson: Did not expect such a motion after the establishment of the contrary principle in the first branch, and considering the reasons which would oppose it, even if an equal vote had been allowed in the first branch. The gentleman from Connecticut (Mr. Ellsworth) had pronounced that if the motion should

not be acceded to, of all the states north of Pennsylvania, one only would agree to any general government. He entertained more favorable hopes of Connecticut and of the other northern states. He hoped the alarms exceeded their cause, and that they would not abandon a country to which they were bound by so many strong and endearing ties. But should the deplored event happen, it would neither stagger his sentiments nor his duty. If the minority of the people of America refuse to coalesce with the majority on just and proper principles; if a separation must take place, it could never happen on better grounds. The votes of yesterday against the just principle of representation were as twenty-two to ninety, of the people of America. Taking the opinions to be the same on this point, and he was sure, if there was any room for change, it could not be on the side of the majority, the question will be, shall less than one-fourth of the United States withdraw themselves from the Union, or shall more than three-fourths renounce the inherent, indisputable and unalienable rights of men in favor of the artificial system of states? If issue must be joined, it was on this point he would choose to join it. The gentleman from Connecticut, in supposing that the preponderance secured to the majority in the first branch had removed the objections to an equality of votes in the second branch for the security of the minority, narrowed the case extremely. Such an equality will enable the minority to control, in all cases whatsoever, the sentiments and interests of the majority. Seven states will control six: seven states, according to the estimates that had been used, composed twenty-four ninetieths of the whole people. It would be in the power, then, of less than one-third to overrule two-thirds, whenever a question should happen to divide the states in that manner. Can we forget for whom we are forming a government? Is it for *men*, or for the imaginary beings called *states*? Will our honest constituents be satisfied with metaphysical distinctions? Will they, ought they to be satisfied with being told that the one-third compose the greater number of states? The rule of suffrage ought on every principle to be the same in the second as in the first branch. If the



government be not laid on this foundation, it can be neither solid nor lasting. Any other principle will be local, confined and temporary. This will expand with the expansion, and grow with the growth of the United States. Much has been said of an imaginary combination of three states. Sometimes a danger of monarchy, sometimes of aristocracy, has been charged on it. No explanation, however, of the danger has been vouchsafed. It would be easy to prove, both from reason and history, that rivalships would be more probable than coalitions; and that there are no coinciding interests that could produce the latter. No answer has yet been given to the observations of Mr. Madison on this subject. Should the executive magistrate be taken from one of the large states, would not the other two be thereby thrown into the scale with the other states? Whence, then, the danger of monarchy? Are the people of the three large states more aristocratic than those of the small ones? Whence, then, the danger of aristocracy from their influence? It is all a mere illusion of names. We talk of states, till we forget what they are composed of. Is a real and fair majority the natural hot-bed of aristocracy? It is a part of the definition of this species of government, or rather of tyranny, that the smaller number governs the greater. It is true that a majority of states in the second branch cannot carry a law against a majority of the people in the first. But this removes half only of the objection. Bad governments are of two sorts—first, that which does too little; secondly, that which does too much; that which fails through weakness, and that which destroys through oppression. Under which of these evils do the United States at present groan? Under the weakness and inefficiency of its government. To remedy this weakness we have been sent to this Convention. If the motion should be agreed to, we shall leave the United States fettered precisely as heretofore; with the additional mortification of seeing the good purposes of the fair representation of the people in the first branch defeated in the second. Twenty-four will still control sixty-six. He lamented that such a disagreement should

prevail on the point of representation, as he did not foresee that it would happen on the other point most contested, the boundary between the general and the local authorities. He thought the states necessary and valuable parts of a good system.

Ellsworth: The capital objection of Mr. Wilson, "that the minority will rule the majority," is not true. The power is given to the few to save them from being destroyed by the many. If an equality of votes had been given to them in both branches, the objection might have had weight. Is it a novel thing that the few should have a check on the many? Is it not the case in the British constitution, the wisdom of which so many gentlemen have united in applauding? Have not the House of Lords, who form so small a proportion of the nation, a negative on the laws, as a necessary defense of their peculiar rights against the encroachments of the Commons? No instance of a confederacy has existed in which an equality of voices has not been exercised by the members of it. We are running from one extreme to another. We are razing the foundations of the building when we need only repair the roof. No salutary measure has been lost for want of *a majority of the states* to favor it. If security be all that the great states wish for, the first branch secures them. The danger of combinations among them is not imaginary. Although no particular abuses could be foreseen by him, the possibility of them would be sufficient to alarm him. But he could easily conceive cases in which they might result from such combinations. Suppose that, in pursuance of some commercial treaty or arrangement, three or four free ports and no more were to be established, would not combinations be formed in favor of Boston, Philadelphia, and some port of the Chesapeake? A like concert might be formed in the appointment of the great offices. He appealed again to the obligations of the federal compact, which was still in force, and which had been entered into with so much solemnity; persuading himself that some regard would still be paid to the plighted faith under which each state, small as well as

great, held an equal right of suffrage in the general councils. His remarks were not the result of partial or local views. The state he represented (Connecticut) held a middle rank.

Madison: Did justice to the able and close reasoning of Mr. Ellsworth, but must observe that it did not always accord with itself. On another occasion, the large states were described by him as the aristocratic states, ready to oppress the small. Now the small are the House of Lords, requiring a negative to defend them against the more numerous Commons. Mr. Ellsworth had also erred in saying that no instance had existed in which confederated states had not retained to themselves a perfect equality of suffrage. Passing over the German system, in which the King of Prussia has nine voices, he reminded Mr. Ellsworth of the Lycian confederacy, in which the component members had votes proportioned to their importance, and which Montesquieu recommends as the fittest model for that form of government. Had the fact been as stated by Mr. Ellsworth, it would have been of little avail to him, or rather would have strengthened the arguments against him; the history and fate of the several confederacies, modern as well as ancient, demonstrating some radical vice in their structure. In reply to the appeal of Mr. Ellsworth to the faith plighted in the existing federal compact, he remarked that the party claiming from others an adherence to a common engagement ought at least to be guiltless itself of a violation. Of all the states, however, Connecticut was perhaps least able to urge this plea. Besides the various omissions to perform the stipulated acts, from which no state was free, the legislature of that state had, by a pretty recent vote, *positively refused* to pass a law for complying with the requisitions of Congress, and had transmitted a copy of the vote to Congress. It was urged, he said, continually, that an equality of votes in the second branch was not only necessary to secure the small, but would be perfectly safe to the large ones, whose majority in the first branch was an effectual bulwark. But notwithstanding this apparent defense, the majority of states might still injure the majority of the people. In the first place, they could *obstruct* the wishes

and interests of the majority. Secondly, they could *extort* measures repugnant to the wishes and interest of the majority. Thirdly, they could *impose* measures adverse thereto; as the second branch will probably exercise some great powers, in which the first will not participate. He admitted that every peculiar interest, whether in any class of citizens, or any description of states, ought to be secured as far as possible. Wherever there is danger of attack, there ought to be given a constitutional power of defense. But he contended that the states were divided into different interests, not by their difference of size, but other circumstances; the most material of which resulted partly from climate but principally from the effects of their having or not having slaves. These two causes concurred in forming the great division of interests in the United States. It did not lie between the large and small states. It lay between the northern and southern; and if any defensive power were necessary, it ought to be mutually given to these two interests. He was so strongly impressed with this important truth that he had been casting about in his mind for some expedient that would answer the purpose. The one which had occurred was that, instead of proportioning the votes of the states in both branches to their respective numbers of inhabitants, computing the slaves in the ratio of five to three, they should be represented in one branch according to the number of free inhabitants only, and in the other according to the whole number, counting the slaves as free. By this arrangement the southern scale would have the advantage in one house and the northern in the other. He had been restrained from proposing this expedient by two considerations; one was his unwillingness to urge any diversity of interests on an occasion where it is but too apt to arise of itself, the other was the inequality of powers that must be vested in the two branches, and which would destroy the equilibrium of interests.

Ellsworth: Assured the House that, whatever might be thought of the representatives of Connecticut, the state was entirely federal in her disposition. He appealed to her great exertions during the war in supplying both men and money. The muster

rolls would show she had more troops in the field than Virginia. If she had been delinquent, it had been from inability, and not more so than other states.

Sherman: Mr. Madison animadverted on the delinquency of the states, when his object required him to prove that the constitution of Congress was faulty. Congress is not to blame for the faults of the states. Their measures have been right, and the only thing wanting has been a further power in Congress to render them effectual.

Davie: Was much embarrassed, and wished for explanations.

The report of the Committee, allowing the legislatures to choose the Senate, and establishing a proportional representation in it, seemed to be impracticable. There will, according to this rule, be ninety members in the outset, and the number will increase as new states are added. It was impossible that so numerous a body could possess the activity and other qualities required in it. Were he to vote on the comparative merits of the report as it stood, and the amendment, he should be constrained to prefer the latter. The appointment of the Senate by electors, chosen by the people for that purpose was, he conceived, liable to an insuperable difficulty. The larger counties or districts, thrown into a general district, would certainly prevail over the smaller counties or districts, and merit in the latter would be excluded altogether. The report, therefore, seemed to be right in referring the appointment to the legislatures, whose agency in the general system did not appear to him objectionable, as it did to some others. The fact was that the local prejudices and interests which could not be denied to exist, would find their way into the national councils, whether the representatives should be chosen by the legislatures or by the people themselves. On the other hand, if a proportional representation was attended with insuperable difficulties, the making the Senate the representative of the states looked like bringing us back to Congress again, and shutting out all the advantages expected from it. Under this view of the subject, he could not vote for any plan for the Senate yet proposed. He thought that, in general, there were extremes

on both sides. We were partly federal, partly national, in our union; and he did not see why the government might not in some respects operate on the states, in others on the people.

Wilson: Admitted the question concerning the number of senators to be embarrassing. If the smallest states be allowed one, and the others in proportion, the Senate will certainly be too numerous. He looked forward to the time when the smallest states will contain a hundred thousand souls at least. Let there be then one senator in each, for every hundred thousand souls, and let the states not having that number of inhabitants be allowed one. He was willing himself to submit to this temporary concession to the small states; and threw out the idea as a ground of compromise.

Franklin: The diversity of opinions turns on two points. If a proportional representation takes place, the small states contend that their liberties will be in danger. If an equality of votes is to be put in its place, the large states say their money will be in danger. When a broad table is to be made, and the edges of planks do not fit, the artist takes a little from both and makes a good joint. In like manner, here, both sides must part from some of their demands in order that they may join in some accommodating proposition. He had prepared one which he would read, that it might lie on the table for consideration. The proposition was in the words following:

“That the legislatures of the several states shall choose and send an equal number of delegates, namely ———, who are to compose the second branch of the general legislature.

“That in all cases or questions wherein the sovereignty of individual states may be affected, or whereby their authority over their own citizens may be diminished, or the authority of the general government within the several states augmented, each state shall have equal suffrage.

“That in the appointment of all civil officers of the general government, in the election of whom the second branch may by the Constitution have part, each state shall have equal suffrage.

“That in fixing the salaries of such officers, and in all allow-

ances for public services, and generally in all appropriations and dispositions of money to be drawn out of the general treasury; and in all laws for supplying that treasury, the delegates of the several states shall have suffrage in proportion to the sums which their respective states do actually contribute to the treasury."

Where a ship had many owners, this was the rule of deciding on her expedition. He had been one of the ministers from this country to France during the joint war, and would have been very glad if allowed to vote in distributing the money to carry it on.

King: Observed that the simple question was whether each state should have an equal vote in the second branch; that it must be apparent to those gentlemen who liked neither the motion for this quality nor the report as it stood, that the report was as susceptible of melioration as the motion; that a reform would be nugatory and nominal only if we should make another Congress of the proposed Senate; that if the adherence to an equality of votes was fixed and unalterable, there could not be less obstinacy on the other side; and that we were in fact cut asunder already, and it was in vain to shut our eyes against it. That he was, however, filled with astonishment that, if we were convinced that every *man* in America was secured in all his rights, we should be ready to sacrifice this substantial good to the phantom of *state* sovereignty. That his feelings were more harrowed and his fears more agitated for his country than he could express; that he conceived this to be the last opportunity of providing for its liberty and happiness; that he could not, therefore, but repeat his amazement that when a just government, founded on a fair representation of the *people* of America, was within our reach, we should renounce the blessing, from an attachment to the ideal freedom and importance of *states*. That should this wonderful illusion continue to prevail, his mind was prepared for every event, rather than sit down under a government founded on a vicious principle of representation, and which must be as short-lived as it would be unjust. He might prevail on himself to accede to

some such expedient as had been hinted by Mr. Wilson; but he never could listen to an equality of votes as proposed in the motion.

Dayton: When assertion is given for proof, and terror substituted for arguments, he presumed they would have no effect, however eloquently spoken. It should have been shown that the evils we have experienced have proceeded from the equality now objected to, and that the seeds of dissolution for the state governments are not sown in the general government. He considered the system on the table as a novelty, an amphibious monster, and was persuaded that it never would be received by the people.

L. Martin: Would never confederate if it could not be done on just principles.

Madison: Would acquiesce in the concession hinted by Mr. Wilson, on condition that a due independence should be given to the Senate. The plan in its present shape makes the Senate absolutely dependent on the states. The Senate, therefore, is only another edition of Congress. He knew the faults of that body and had used a bold language against it. Still he would preserve the state rights as carefully as the trial by jury.

Bedford: Contended that there was no middle way between a perfect consolidation and a mere confederacy of the states. The first is out of the question; and in the latter they must continue, if not perfectly, yet equally, sovereign. If political societies possess ambition, avarice, and all the other passions which render them formidable to each other, ought we not to view them in this light here? Will not the same motives operate in America as elsewhere? If any gentleman doubts it, let him look at the votes. Have they not been dictated by interest, by ambition? Are not the large states evidently seeking to aggrandize themselves at the expense of the small? They think, no doubt, that they have right on their side, but interest had blinded their eyes. Look at Georgia. Though a small state at present, she is actuated by the prospect of soon being a great one. South Carolina is actuated both by present interest and future prospects. She hopes, too, to see the other states cut



down to her own dimensions. North Carolina has the same motives of present and future interest. Virginia follows. Maryland is not on that side of the question. Pennsylvania has a direct and future interest. Massachusetts has a decided and palpable interest in the part she takes. Can it be expected that the small states will act from pure disinterestedness? Look at Great Britain. Is the representation there less unequal? But we shall be told again that that is the rotten part of the constitution. Have not the boroughs, however, held fast their constitutional rights? And are we to act with greater purity than the rest of mankind? An exact proportion in the representation is not preserved in any one of the states. Will it be said that an inequality of power will not result from an inequality of votes. Give the opportunity, and ambition will not fail to abuse it. The whole history of mankind proves it. The three large states have a common interest to bind them together in commerce. But whether a combination, as we supposed, or a competition, as others supposed, shall take place among them, in either case the small states must be ruined. We must, like Solon, make such a government as the people will approve. Will the smaller states ever agree to the proposed degradation of them? It is not true that the people will not agree to enlarge the powers of the present Congress. The language of the people has been that Congress ought to have the power of collecting an impost, and of coercing the states where it may be necessary. On the first point they have been explicit, and, in a manner, unanimous in their declarations. And must they not agree to this, and similar measures, if they ever mean to discharge their engagements? The little states are willing to observe their engagements, but will meet the large ones on no ground but that of the Confederation. We have been told, with a dictatorial air, that this is the last moment for a fair trial in favor of a good government. It will be the last, indeed, if the propositions reported from the committee go forth to the people. He was under no apprehensions. The large states dare not dissolve the Confederation. If they do, the small ones will find some foreign ally, of more honor and good faith, who

will take them by the hand, and do them justice. He did not mean, by this, to intimidate or alarm. It was a natural consequence which ought to be avoided by enlarging the federal powers, not annihilating the federal system. This is what the people expect. All agree in the necessity of a more efficient government, and why not make such an one as they desire?

Ellsworth: Under a national government he should participate in the national security, as remarked by Mr. King, but that was all. What he wanted was domestic happiness. The national government could not descend to the local objects on which this depended. It could only embrace objects of a general nature. He turned his eyes, therefore, for the preservation of his rights, to the state governments. From these alone he could derive the greatest happiness he expects in this life. His happiness depends on their existence as much as a new-born infant on its mother for nourishment. If this reasoning was not satisfactory, he had nothing to add that could be so.

King: Was for preserving the states in a subordinate degree, and as far as they could be necessary for the purposes stated by Mr. Ellsworth. He did not think a full answer had been given to those who apprehended a dangerous encroachment on their jurisdictions. Expedients might be devised, as he conceived, that would give them all the security the nature of things would admit of. In the establishment of societies, the Constitution was to the legislature what the laws were to individuals. As the fundamental rights of individuals are secured by express provisions in the state constitutions, why may not a like security be provided for the rights of states in the national Constitution? The articles of union between England and Scotland furnish an example of such a provision, in favor of sundry rights of Scotland. When that union was in agitation, the same language of apprehension which has been heard from the smaller states was in the mouths of the Scotch patriots. The articles, however, have not been violated, and the Scotch have found an increase of prosperity and happiness. He was aware that this will be called a mere *paper security*. He thought it a sufficient answer to say that if fundamental articles of compact

are no sufficient defense against physical power, neither will there be any safety against it if there be no compact. He could not sit down without taking some notice of the language of the honorable gentleman from Delaware (Mr. Bedford). It was not he that had uttered a dictatorial language. This intemperance had marked the honorable gentleman himself. It was not he who, with a vehemence unprecedented in that house, had declared himself ready to turn his hopes from our common country, and court the protection of some foreign hand. This, too, was the language of the honorable member himself. He was grieved that such a thought had entered his heart. He was more grieved that such an expression had dropped from his lips. The gentleman could only excuse it to himself on the score of passion. For himself, whatever might be his distress, he would never court relief from a foreign power.

*July 2* On the question for allowing each state one vote in the second branch, as moved by Ellsworth, it was lost by an equal division of votes: Yeas 5 (Connecticut, New York, New Jersey, Delaware, Maryland); nays 5 (Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina); divided 1 (Georgia).

#### ADJUSTMENT BY COMPROMISE

*July 2* **Fundamentals in Convention.** C. Pinckney: Thought an equality of votes in the second branch inadmissible. At the same time, candor obliged him to admit that the large states would feel a partiality for their own citizens, and give them a preference in appointments: that they might also find some common points in their commercial interests, and promote treaties favorable to them. There is a real distinction between the northern and southern interests. North Carolina, South Carolina, and Georgia, in their rice and indigo, had a peculiar interest which might be sacrificed. How, then, shall the larger states be prevented from administering the general government as they please without being themselves unduly subjected to the will of the smaller? By allowing them some, but

not a full, proportion. He was extremely anxious that something should be done, considering this as the last appeal to a regular experiment. Congress have failed in almost every effort for an amendment of the federal system. Nothing has prevented a dissolution of it but the appointment of this Convention; and he could not express his alarms for the consequence of such an event. He read his motion to form the states into classes, with an apportionment of senators among them.

C. C. Pinckney: Was willing the motion might be considered. He did not entirely approve it. He liked better the motion of Dr. Franklin. Some compromise seemed to be necessary, the states being exactly divided on the question for an equality of votes in the second branch. He proposed that a committee consisting of a member from each state should be appointed to devise and report some compromise.

L. Martin: Had no objection to a commitment, but no modifications whatever could reconcile the smaller states to the least diminution of their equal sovereignty.

Sherman: We are now at full stop; and nobody, he supposed, meant that we should break up without doing something. A committee he thought most likely to hit on some expedient.

G. Morris: Thought a committee advisable, as the Convention had been equally divided. He had a stronger reason also. The mode of appointing the second branch tended, he was sure, to defeat the object of it. What is this object? To check the precipitation, changeableness, and excesses of the first branch. Every man of observation had seen in the democratic branches of the state legislatures, precipitation—in Congress, changeableness—in every department, excesses against personal liberty, private property, and personal safety. What qualities are necessary to constitute a check in this case? *Abilities* and *virtue* are equally necessary in both branches. Something more, then, is now wanted. In the first place, the checking branch must have a personal interest in checking the other branch. One interest must be opposed to another interest. Vices, as they exist, must be turned against each other. In the second place, it must have

great personal property; it must have the aristocratic spirit; it must love to lord it through pride. Pride is, indeed, the great principle that actuates both the poor and the rich. It is this principle which in the former resists, in the latter abuses authority. In the third place, it should be independent. In religion the creature is apt to forget its Creator. That it is otherwise in political affairs, the late debates here are an unhappy proof. The aristocratic body should be as independent, and as firm, as the democratic. If the members of it are to revert to a dependence on the democratic choice, the democratic scale will preponderate. All the guards contrived by America have not restrained the senatorial branches of the legislatures from a servile complaisance to the democratic. If the second branch is to be dependent, we are better without it. To make it independent, it should be for life. It will then do wrong, it will be said. He believed so; he hoped so. The rich will strive to establish their dominion and enslave the rest. They always did. They always will. The proper security against them is to form them into a separate interest. The two forces will then control each other. Let the rich mix with the poor, and in a commercial country they will establish an oligarchy. Take away commerce, and the democracy will triumph. Thus it has been all the world over. So it will be among us. Reason tells us we are but men; and we are not to expect any particular interference of heaven in our favor. By thus combining, and setting apart, the aristocratic interests, the popular interest will be combined against it. There will be a mutual check and mutual security. In the fourth place, an independence for life involves the necessary permanency. If we change our measures, nobody will trust us—and how avoid a change of measures but by avoiding a change of men? Ask any man if he confides in Congress—if he confides in the state of Pennsylvania—if he will lend his money, or enter into contract? He will tell you, no. He sees no stability. He can repose no confidence. If Great Britain were to explain her refusal to treat with us, the same reasoning would be employed. He disliked the exclusion of the second branch from holding offices. It is dangerous. It is

like the imprudent exclusion of the military officers, during the war, from civil appointments. It deprives the executive of the principal source of influence. If danger be apprehended from the executive, what a left-handed way is this of obviating it! If the son, the brother, or the friend can be appointed, the danger may be even increased, as the disqualified father, etc., can then boast of a disinterestedness which he does not possess. Besides, shall the best, the most able, the most virtuous citizens not be permitted to hold offices? Who then are to hold them? He was also against paying the senators. They will pay themselves, if they can. If they cannot, they will be rich, and can do without it. Of such the second branch ought to consist; and none but such can compose it, if they are not to be paid. He contended that the executive should appoint the Senate, and fill up vacancies. This gets rid of the difficulty in the present question. You may begin with any ratio you please, it will come to the same thing. The members being independent and for life may be taken as well from one place as from another. It should be considered, too, how the scheme could be carried through the states. He hoped there was strength of mind enough in this house to look truth in the face. He did not hesitate, therefore, to say that loaves and fishes must bribe the demagogues. They must be made to expect higher offices under the general than the state governments. A Senate for life will be a noble bait. Without such captivating prospects, the popular leaders will oppose and defeat the plan. He perceived that the first branch was to be chosen by the people of the states, the second by those chosen by the people. Is not here a government by the states—a government by compact between Virginia in the first and second branch, Massachusetts in the first and second branch, etc.? This is going back to mere treaty. It is no government at all. It is altogether dependent on the states, and will act over again the part which Congress has acted. A firm government alone can protect our liberties. He fears the influence of the rich. They will have the same effect here as elsewhere, if we do not, by such a government, keep them within their proper spheres. We should remember that

the people never act from reason alone. The rich will take the advantage of their passions, and make these the instruments for oppressing them. The result of the contest will be a violent aristocracy, or a more violent despotism. The schemes of the rich will be favored by the extent of the country. The people in such distant parts cannot communicate and act in concert. They will be the dupes of those who have more knowledge and intercourse. The only security against encroachments will be a select and sagacious body of men, instituted to watch against them on all sides. He meant only to hint these observations, without grounding any motion on them.

Randolph: Favored the commitment, though he did not expect much benefit from the expedient. He animadverted on the warm and rash language of Mr. Bedford on Saturday; reminded the small states that if the large states should combine, some danger of which he did not deny, there would be a check in the revisionary power of the executives; and intimated that, in order to render this still more effectual, he would agree that in the choice of an executive, each state should have an equal vote. He was persuaded that two such opposite bodies as Mr. Morris had planned could never long co-exist. Dissensions would arise, as has been seen even between the senate and house of delegates in Maryland; appeals would be made to the people; and in a little time, commotions would be the result. He was far from thinking the large states could subsist of themselves, any more than the small; an avulsion would involve the whole in ruin; and he was determined to pursue such a scheme of government as would secure us against such a calamity.

Strong: Was for the commitment; and hoped the mode of constituting both branches would be referred. If they should be established on different principles, contentions would prevail, and there would never be a concurrence in necessary measures.

Williamson: If we do not concede on both sides, our business must soon be at end. He approved of the commitment, sup-

posing that, as the committee would be a smaller body, a compromise would be pursued with more coolness.

Wilson: Objected to the committee because it would decide according to that very rule of voting which was opposed on one side. Experience in Congress had also proved the inutility of committees consisting of members from each state.

Lansing: Would not oppose the commitment, though expecting little advantage from it.

Madison: Opposed the commitment. He had rarely seen any other effect than delay from *such* committees in Congress. Any scheme of compromise that could be proposed in the committee might as easily be proposed in the house; and the report of the committee, where it contained merely the *opinion* of the committee, would neither shorten the discussion nor influence the decision of the house.

Gerry: Was for the commitment. Something must be done, or we shall disappoint not only America but the whole world. He suggested a consideration of the state we should be thrown into by the failure of the Union. We should be without an umpire to decide controversies, and must be at the mercy of events. What, too, is to become of our treaties—what of our foreign debts—what of our domestic? We must make concessions on both sides. Without these, the constitutions of the several states would never have been formed.

On the question for committing, generally: Yeas 9 (Massachusetts, Connecticut, New York, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia); nays 2 (New Jersey, Delaware).

On the question for committing it "to a member from each state": Yeas 10 (Massachusetts, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia); nays 1 (Pennsylvania).

The committee, elected by ballot, were: Gerry, Ellsworth, Yates, Paterson, Franklin, Bedford, Martin, Mason, Davie, Rutledge, Baldwin.

Gerry delivered in, from the committee appointed on Monday last, the following report: July 5



"The committee to whom was referred the eighth resolution of the report from the Committee of the Whole House, and so much of the seventh as has not been decided on, submit the following report:

"That the subsequent propositions be recommended to the Convention on condition that both shall be generally adopted.

"1. That in the first branch of the legislature, each of the states now in the Union shall be allowed one member for every forty thousand inhabitants, of the description reported in the seventh resolution of the Committee of the Whole House: that each state not containing that number shall be allowed one member: that all bills for raising or appropriating money, and for fixing the salaries of the officers of the government of the United States, shall originate in the first branch of the legislature, and shall not be altered or amended by the second branch; and that no money shall be drawn from the public treasury but in pursuance of appropriations to be originated in the first branch.

"2. That in the second branch, each state shall have an equal vote."

Gorham: Observed that, as the report consisted of propositions mutually conditional, he wished to hear some explanations touching the grounds on which the conditions were estimated.

Gerry: The committee were of different opinions, as well as the deputations from which the committee were taken; and agreed to the report merely in order that some ground of accommodation might be proposed. Those opposed to the equality of votes have only assented conditionally; and if the other side do not generally agree, will not be under any obligation to support the report.

Wilson: Thought the committee had exceeded their powers.

L. Martin: Was for taking the question on the whole report.

Wilson: Was for a division of the question; otherwise it would be a leap in the dark.

Madison: Could not regard the privilege of originating money bills as any concession on the side of the small states. Experience proved that it had no effect. If seven states in the upper

branch wished a bill to be originated, they might surely find some member from some of the same states in the lower branch who would originate it. The restriction as to amendments was of as little consequence. Amendments could be handed privately by the Senate to members in the other house. Bills could be negatived that they might be sent up in the desired shape. If the Senate should yield to the obstinacy of the first branch, the use of that body as a check would be lost. If the first branch should yield to that of the Senate, the privilege would be nugatory. Experience had also shown, both in Great Britain and the states having a similar regulation, that it was a source of frequent and obstinate altercations. These considerations had produced a rejection of a like motion on a former occasion, when judged by its own merits. It could not, therefore, be deemed any concession on the present, and left in force all the objections which had prevailed against allowing each state an equal voice. He conceived that the Convention was reduced to the alternative of either departing from justice in order to conciliate the smaller states and the minority of the people of the United States, or of displeasing these, by justly gratifying the larger states and the majority of the people. He could not himself hesitate as to the option he ought to make. The Convention, with justice and a majority of the people on their side, had nothing to fear. With injustice and the minority on their side, they had everything to fear. It was in vain to purchase concord in the convention on terms which would perpetuate discord among their constituents. The Convention ought to pursue a plan which would bear the test of examination, which would be espoused and supported by the enlightened and impartial part of America, and which they could themselves vindicate and urge. It should be considered that, although at first many may judge of the system recommended by their opinion of the Convention, yet finally all will judge of the Convention by the system. The merits of the system alone can finally and effectually obtain the public suffrage. He was not apprehensive that the people of the small states would obstinately refuse to accede to a government founded on just principles, and

promising them substantial protection. He could not suspect that Delaware would brave the consequences of seeking her fortunes apart from the other states rather than submit to such a government; much less could he suspect that she would pursue the rash policy of courting foreign support, which the warmth of one of her representatives (Mr. Bedford) had suggested; or if she should, that any foreign nation would be so rash as to hearken to the overture. As little could he suspect that the people of New Jersey, notwithstanding the decided tone of the gentleman from that state, would choose rather to stand on their own legs, and bid defiance to events, than to acquiesce under an establishment founded on principles the justice of which they could not dispute, and absolutely necessary to redeem them from the exactions levied on them by the commerce of the neighboring states. A review of other states would prove that there was as little reason to apprehend an inflexible opposition elsewhere. Harmony in the Convention was, no doubt, much to be desired. Satisfaction to all the states, in the first instance, still more so. But if the principal states comprehending a majority of the people of the United States should concur in a just and judicious plan, he had the firmest hopes that all the other states would by degrees accede to it.

Butler: Said he could not let down his idea of the people of America so far as to believe they would, from mere respect to the Convention, adopt a plan evidently unjust. He did not consider the privilege concerning money bills as of any consequence. He urged that the second branch ought to represent the states according to their property.

G. Morris: Thought the form as well as the matter of the report objectionable. It seemed, in the first place, to render amendment impracticable. In the next place, it seemed to involve a pledge to agree to the second part, if the first should be agreed to. He conceived the whole aspect of it to be wrong. He came here as a representative of America; he flattered himself he came here in some degree as a representative of the whole human race; for the whole human race will be affected by the

proceedings of this Convention. He wished gentlemen to extend their views beyond the present moment of time; beyond the narrow limits of place from which they derive their political origin. If he were to believe some things which he had heard, he should suppose that we were assembled to truck and bargain for our particular states. He cannot descend to think that any gentlemen are really actuated by these views. We must look forward to the effects of what we do. These alone ought to guide us. Much has been said of the sentiments of the people. They were unknown. They could not be known. All that we can infer is that, if the plan we recommend be reasonable and right, all who have reasonable minds and sound intentions will embrace it, notwithstanding what had been said by some gentlemen. Let us suppose that the larger states shall agree and that the smaller refuse; and let us trace the consequences. The opponents of the system in the smaller states will no doubt make a party and a noise for a time, but the ties of interest, of kindred, and of common habits, which connect them with other states, will be too strong to be easily broken. In New Jersey, particularly, he was sure a great many would follow the sentiments of Pennsylvania and New York. This country must be united. If persuasion does not unite it, the sword will. He begged this consideration might have its due weight. The scenes of horror attending civil commotion cannot be described; and the conclusion of them will be worse than the term of their continuance. The stronger party will then make traitors of the weaker; and the gallows and halter will finish the work of the sword. How far foreign powers would be ready to take part in the confusions, he would not say. Threats that they will be invited have, it seems, been thrown out. He drew the melancholy picture of foreign intrusions, as exhibited in the history of Germany, and urged it as a standing lesson to other nations. He trusted that the gentlemen who may have hazarded such expressions did not entertain them till they reached their own lips. But returning to the report, he could not think it in any respect calculated for the public good. As the second branch is now constituted, there will be

constant disputes and appeals to the states, which will undermine the general government, and control and annihilate the first branch. Suppose that the delegates from Massachusetts and Rhode Island, in the upper house, disagree, and that the former are outvoted. What results? They will immediately declare that their state will not abide by the decision, and make such representations as will produce that effect. The same may happen as to Virginia and other states. Of what avail, then, will be what is on paper? State attachments and state importance have been the bane of this country. We cannot annihilate, but we may perhaps take out the teeth of, the serpents. He wished our ideas to be enlarged to the true interest of man, instead of being circumscribed within the narrow compass of a particular spot. And, after all, how little can be the motive yielded by selfishness for such a policy? Who can say whether he himself, much less whether his children, will the next year be an inhabitant of this or that state?

Bedford: He found that what he had said as to the small states being taken by the hand had been misunderstood—and he rose to explain. He did not mean that the small states would court the aid and interposition of foreign powers. He meant that they would not consider the federal compact as dissolved until it should be so by the acts of the large states. In this case, the consequence of the breach of faith on their part and the readiness of the small states to fulfil their engagements would be that foreign nations having demands on this country would find it their interest to take the small states by the hand in order to do themselves justice. This was what he meant. But no man can foresee to what extremities the small states may be driven by oppression. He observed, also, in apology, that some allowance ought to be made for the habits of his profession, in which warmth was natural and sometimes necessary. But is there not an apology in what was said by Mr. Gouverneur Morris, that the sword is to unite—by Mr. Gorham, that Delaware must be annexed to Pennsylvania and New Jersey divided between Pennsylvania and New York? To hear such language without emotion would be to renounce the

feelings of a man and the duty of a citizen. As to the propositions of the committee, the lesser states have thought it necessary to have a security somewhere. This has been thought necessary for the executive magistrate of the proposed government, who has a sort of negative on the laws; and is it not of more importance that the states should be protected than that the executive branch of the government should be protected? In order to obtain this, the smaller states have conceded as to the constitution of the first branch and as to money bills. If they be not gratified by correspondent concessions as to the second branch, is it to be supposed they will ever accede to the plan? And what will be the consequence, if nothing should be done? The condition of the United States requires that something should be immediately done. It will be better that a defective plan should be adopted than that none should be recommended. He saw no reason why defects might not be supplied by meetings ten, fifteen, or twenty years hence.

Ellsworth: Said he had not attended the proceedings of the committee, but was ready to accede to the compromise they had reported. Some compromise was necessary, and he saw none more convenient or reasonable.

Williamson: Hoped that the expressions of individuals would not be taken for the sense of their colleagues, much less of their states, which was not and could not be known. He hoped, also, that the meaning of those expressions would not be misconstrued or exaggerated. He did not conceive that Mr. Gouverneur Morris meant that the sword ought to be drawn against the smaller states. He only pointed out the probable consequences of anarchy in the United States. A similar exposition ought to be given of the expressions of Mr. Gorham. He was ready to hear the report discussed, but thought the propositions contained in it the most objectionable of any he had yet heard.

Paterson: Said that he had, when the report was agreed to in the committee, reserved to himself the right of freely discussing it. He acknowledged that the warmth complained of was improper; but he thought the sword and the gallows little

calculated to produce conviction. He complained of the manner in which Mr. Madison and Mr. G. Morris had treated the small states.

Gerry: Though he had assented to the report in the committee, he had very material objections to it. We were, however, in a peculiar situation. We were neither the same nation, nor different nations. We ought not, therefore, to pursue the one or the other of these ideas too closely. If no compromise should take place, what will be the consequence? A secession, he foresaw, would take place; for some gentlemen seemed decided on it. Two different plans will be proposed, and the result no man could foresee. If we do not come to some agreement among ourselves, some foreign sword will probably do the work for us.

Mason: The report was meant not as specific propositions to be adopted, but merely as a general ground of accommodation. There must be some accommodation on this point, or we shall make little further progress in the work. Accommodation was the object of the House in the appointment of the committee, and of the committee in the report they had made. And, however liable the report might be to objections, he thought it preferable to an appeal to the world by the different sides, as had been talked of by some gentlemen. It could not be more inconvenient to any gentlemen to remain absent from his private affairs than it was for him, but he would bury his bones in this city rather than expose his country to the consequences of a dissolution of the Convention without any thing being done.

The first proposition in the report for fixing the representation in the first branch, "one member for every forty thousand inhabitants," being taken up:

G. Morris: Objected to that scale of apportionment. He thought property ought to be taken into the estimate as well as the number of inhabitants. Life and liberty were generally said to be of more value than property. An accurate view of the matter would, nevertheless, prove that property was the main object of society. The savage state was more favorable to

liberty than the civilized, and sufficiently so to life. It was preferred by all men who had not acquired a taste for property; it was only renounced for the sake of property which could only be secured by the restraints of regular government. These ideas might appear to some new, but they were nevertheless just. If property, then, was the main object of government, certainly it ought to be one measure of the influence due to those who were to be affected by the government. He looked forward, also, to that range of new states which would soon be formed in the west. He thought the rule of representation ought to be so fixed as to secure to the Atlantic states a prevalence in the national councils. The new states will know less of the public interest than these; will have an interest in many respects different, in particular will be little scrupulous of involving the community in wars the burdens and operations of which would fall chiefly on the maritime states. Provision ought, therefore, to be made to prevent the maritime states from being hereafter outvoted by them. He thought this might be easily done by irrevocably fixing the number of representatives which the Atlantic states should respectively have, and the number which each new state will have. This would not be unjust, as the western settlers would previously know the conditions on which they were to possess their lands. It would be politic, as it would recommend the plan to the present, as well as future, interest of the states which must decide the fate of it.

Rutledge: The gentleman last up had spoken some of his sentiments precisely. Property was certainly the principal object of society. If numbers should be made the rule of representation, the Atlantic states would be subjected to the western. He moved that the first proposition in the report be postponed in order to take up the following, viz.: "that the suffrages of the several states be regulated and proportioned according to the sums to be paid towards the general revenue by the inhabitants of each state respectively; that an apportionment of suffrages, according to the ratio aforesaid shall be made and regulated at the end of ——— years from the first meeting of



the legislature of the United States, and at the end of every ——— years; but that for the present, and until the period above mentioned, the suffrages shall be for New Hampshire ———, for Massachusetts ———, etc.”

Mason: Said the case of new states was not unnoticed in the committee; but it was thought, and he was himself decidedly of opinion, that if they made a part of the Union, they ought to be subject to no unfavorable discriminations. Obvious considerations required it.

Randolph: Concurred with Col. Mason.

On the question on Rutledge's motion: Yeas 1 (South Carolina); nays 9 (Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina); Georgia absent.

#### ALLOTMENT OF REPRESENTATIVES

*July 6*      **Fundamentals in Convention.** G. Morris: Moved to commit so much of the report as relates to “one member for every forty thousand inhabitants.” His view was that they might absolutely fix the number for each state in the first instance, leaving the legislature at liberty to provide for changes in the relative importance of the states, and for the case of new states.

Wilson: Seconded the motion; but with a view of leaving the committee under no implied shackles.

Gorham: Apprehended great inconvenience from fixing directly the number of representatives to be allowed to each state. He thought the number of inhabitants the true guide, though perhaps some departure might be expedient from the full proportion. The states, also, would vary in their relative extent by separations of parts of the largest states. A part of Virginia is now on the point of a separation. In the Province of Maine, a convention is at this time deliberating on a separation from Massachusetts. In such events the number of representatives ought certainly be reduced. He hoped to see all the states made small by proper divisions, instead of their becoming formidable as was apprehended to the small states. He con-

ceived that, let the government be modified as it might, there would be a constant tendency in the state governments to encroach upon it; it was of importance, therefore, that the extent of the states should be reduced as much and as fast as possible. The stronger the government shall be made in the first instance, the more easily will these divisions be effected, as it will be of less consequence in the opinion of the states, whether they be of great or small extent.

Gerry: Did not think with his colleague that the larger states ought to be cut up. This policy has been inculcated by the middling and small states, ungenerously and contrary to the spirit of the Confederation. Ambitious men will be apt to solicit needless divisions, till the states be reduced to the size of counties. If this policy should still actuate the small states, the large ones could not confederate safely with them, but would be obliged to consult their safety by confederating only with one another. He favored the commitment, and thought that representation ought to be in the combined ratio of numbers of inhabitants and of wealth, and not of either singly.

King: Wished the clause to be committed chiefly in order to detach it from the report, with which it had no connection. He thought, also, that the ratio of representation proposed could not be safely fixed, since in a century and a half our computed increase of population would carry the number of representatives to an enormous excess; that the number of inhabitants was not the proper index of ability and wealth; that property was the primary object of society; and that, in fixing a ratio, this ought not to be excluded from the estimate. With regard to new states, he observed that there was something peculiar in the business which had not been noticed. The United States were now admitted to be proprietors of the country north west of the Ohio. Congress, by one of their ordinances, have impolitically laid it out into ten states, and have made it a fundamental article of compact with those who may become settlers that as soon as the number in any one state shall equal that of the smallest of the thirteen original states, it may claim admission into the Union. Delaware does not contain, it is

computed, more than thirty-five thousand souls; and for obvious reasons will not increase much for a considerable time. It is possible, then, that if this plan be persisted in by Congress, ten new votes may be added without a greater addition of inhabitants than are represented by the single vote of Pennsylvania. The plan, as it respects one of the new states, is already irrevocable, the sale of the lands having commenced, and the purchasers and settlers will immediately become entitled to all the privileges of the compact.

Butler: Agreed to the commitment, if the committee were to be left at liberty. He was persuaded that the more the subject was examined, the less it would appear that the number of inhabitants would be a proper rule of proportion. If there were no other objection, the changeableness of the standard would be sufficient. He concurred with those who thought some balance was necessary between the old and the new states. He contended strenuously that property was the only just measure of representation. This was the great object of government; the great cause of war; the great means of carrying it on.

C. Pinckney: Saw no good reason for committing. The value of land had been found, on full investigation, to be an impracticable rule. The contributions of revenue, including imports and exports, must be too changeable in their amount; too difficult to be adjusted; and too injurious to the non-commercial states. The number of inhabitants appeared to him the only just and practicable rule. He thought the blacks ought to stand on an equality with the whites; but would agree to the ratio settled by Congress. He contended that Congress had no right, under the Articles of Confederation, to authorize the admission of new states, no such case having been provided for.

Davie: Was for committing the clause, in order to get at the merits of the question arising on the report. He seemed to think that wealth or property ought to be represented in the second branch, and numbers in the first branch.

On the motion for committing, as made by G. Morris: Yeas 7 (Massachusetts, Connecticut, Pennsylvania, Virginia, North

Carolina, South Carolina, Georgia); nays 3 (New York, New Jersey, Delaware); divided 1 (Maryland).

The members appointed by ballot were G. Morris, Gorham, Randolph, Rutledge, King.

Wilson: Signified that his view in agreeing to the commitment was that the committee might consider the propriety of adopting a scale similar to that established by the constitution of Massachusetts, which would give an advantage to the small states without substantially departing from the rule of proportion.

Wilson and Mason: Moved to postpone the clause relating to money bills, in order to take up the clause relating to an equality of votes in the second branch.

On the question of postponement: Yeas 8 (New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, South Carolina, Georgia); nays 3 (Massachusetts, Connecticut, North Carolina).

The clause relating to equality of votes being under consideration:

Franklin: Observed that this question could not be properly put by itself, the committee having reported several propositions as mutual conditions of each other. He could not vote for it if separately taken; but would vote for the whole together.

Mason: Perceived the difficulty, and suggested a reference of the rest of the report to the committee just appointed, that the whole might be brought into one view.

Randolph: Disliked the reference to that committee, as it consisted of members from states opposed to the wishes of the small states, and could not, therefore, be acceptable to the latter.

L. Martin and Jenifer: Moved to postpone the clause till the committee last appointed should report.

Madison: Observed that if the uncommitted part of the report was connected with the part just committed, it ought also to be committed; if not connected, it need not be postponed till report should be made.

On the question for postponing, moved by L. Martin and Jennifer: Yeas 6 (Connecticut, New Jersey, Delaware, Maryland, Virginia, Georgia); nays 3 (Pennsylvania, North Carolina, South Carolina); divided 2 (Massachusetts, New York).

*July 7*

The question, shall the clause "allowing each state one vote in the second branch," stand as part of the report, being taken up: Gerry: This is the critical question. He had rather agree to it than have no accommodation. A government short of a proper national plan, if generally acceptable, would be preferable to a proper one which, if it could be carried at all, would operate on discontented states. He thought it would be best to suspend this question till the committee appointed yesterday should make report.

Sherman: Supposed that it was the wish of every one that some general government should be established. An equal vote in the second branch would, he thought, be most likely to give it the necessary vigor. The small states have more vigor in their governments than the large ones; the more influence therefore the large ones have, the weaker will be the government. In the large states, it will be most difficult to collect the real and fair sense of the people. Fallacy and undue influence will be practiced with most success, and improper men will most easily get into office. If they vote by states in the second branch, and each state has an equal vote, there must be always a majority of states, as well as a majority of the people, on the side of public measures, and the government will have decision and efficacy. If this be not the case in the second branch, there may be a majority of states against public measures, and the difficulty of compelling them to abide by the public determination will render the government feebler than it has ever yet been.

Wilson: Was not deficient in a conciliating temper, but firmness was sometimes a duty of higher obligation. Conciliation was also misapplied in this instance. It was pursued here rather among the representatives than among the constituents; and it would be of little consequence if not established among the latter; and there could be little hope of its being established

among them if the foundation should not be laid in justice and right.

On the question, shall the words stand as part of the report?

Yeas 6 (Connecticut, New York, New Jersey, Delaware, Maryland, North Carolina); nays 3 (Pennsylvania, Virginia, South Carolina); divided 2 (Massachusetts, Georgia).

Gerry: Thought it would be proper to proceed to enumerate and define the powers to be vested in the general government, before a question on the report should be taken as to the rule of representation in the second branch.

Madison: Observed that it would be impossible to say what powers could be safely and properly vested in the government before it was known in what manner the states were to be represented in it. He was apprehensive that if a just representation were not the basis of the government, it would happen, as it did when the Articles of Confederation were depending, that every effectual prerogative would be withdrawn or withheld and the new government would be rendered as impotent and as short-lived as the old.

Paterson: Would not decide whether the privilege concerning money bills were a valuable consideration or not, but he considered the mode and rule of representation in the first branch as fully so; and that after the establishment of that point, the small states would never be able to defend themselves without an equality of votes in the second branch. There was no other ground of accommodation. His resolution was fixed. He would meet the large states on that ground, and no other. For himself, he should vote against the report, because it yielded too much.

G. Morris: He had no resolution unalterably fixed except to do what should finally appear to him right. He was against the report because it maintained the improper constitution of the second branch. It made it another Congress, a mere whisp of straw. It had been said (by Mr. Gerry) that the new government would be partly national, partly federal; that it ought in the first quality to protect individuals, in the second, the state. But in what quality was it to protect the aggregate inter-

est of the whole? Among the many provisions which had been urged, he had seen none for supporting the dignity and splendor of the American empire. It had been one of our great misfortunes that the great objects of the nation had been sacrificed constantly to local views, in like manner as the general interest of states had been sacrificed to those of the counties. What is to be the check in the Senate? None; unless it be to keep the majority of the people from injuring particular states. But particular states ought to be injured for the sake of a majority of the people, in case their conduct should deserve it. Suppose they should insist on claims evidently unjust, and pursue them in a manner detrimental to the whole body: suppose they should give themselves up to foreign influence. Ought they to be protected in such cases? They were originally nothing more than colonial corporations. On the Declaration of Independence, a government was to be formed. The small states, aware of the necessity of preventing anarchy, and taking advantage of the moment, extorted from the large ones an equality of votes. Standing now on that ground, they demand, under the new system, greater rights, as men, than their fellow citizens of the large states. The proper answer to them is that the same necessity of which they formerly took advantage does not now exist, and that the large states are at liberty now to consider what is right, rather than what may be expedient. We must have an efficient government, and if there be an efficiency in the local governments, the former is impossible. Germany alone proves it. Notwithstanding their common Diet, notwithstanding the great prerogatives of the emperor, as head of the empire, and his vast resources, as sovereign of his particular dominions, no union is maintained; foreign influence disturbs every internal operation, and there is no energy whatever in the general government. Whence does this proceed? From the energy of the local authorities, from its being considered of more consequence to support the Prince of Hesse than the happiness of the people of Germany. Do gentlemen wish this to be the case here? Good God, sir, is it possible they can so delude themselves? What if all the charters

and constitutions of the states were thrown into the fire, and all their demagogues into the ocean—what would it be to the happiness of America? And will not this be the case here, if we pursue the train in which the business lies? We shall establish an Aulic Council, without an emperor to execute its decrees. The same circumstances which unite the people here unite them in Germany. They have there a common language, a common law, common usages and manners, and a common interest in being united; yet their local jurisdictions destroy every tie. The case was the same in the Grecian states. The United Netherlands are at this time torn in factions. With these examples before our eyes, shall we form establishments which must necessarily produce the same effects? It is of no consequence from what districts the second branch shall be drawn, if it be so constituted as to yield an asylum against these evils. As it is now constituted, he must be against its being drawn from the states in equal portions; but shall be ready to join in devising such an amendment of the plan as will be most likely to secure our liberty and happiness.

Sherman and Ellsworth: Moved to postpone the question on the report from the committee of a member from each state, in order to wait for the report from the committee of five last appointed.

On the question: Yeas 6 (Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland); nays 5 (New York, Virginia, North Carolina, South Carolina, Georgia).



CHAPTER 10  
REPRESENTATION IN THE FEDERAL  
LEGISLATURE—*Continued*

COMMITTEES ON ALLOTMENT OF REPRESENTATIVES

*July 9*      **Fundamentals in Convention.** G. Morris: Delivered a report from the committee of five members, to whom was committed the clause in the report of the committee consisting of a member from each state, stating the proper ratio of representatives in the first branch to be as one to every forty thousand inhabitants, as follows, viz.:

“The committee to whom was referred the first clause of the first proposition reported from the grand committee, beg leave to report:

“That in the first meeting of the legislature, the first branch thereof consist of fifty-six members, of which number New Hampshire shall have 2, Massachusetts 7, Rhode Island 1, Connecticut 4, New York 5, New Jersey 3, Pennsylvania 8, Delaware 1, Maryland 4, Virginia 9, North Carolina 5, South Carolina 5, Georgia 2.

“But as the present situation of the states may probably alter, as well in point of wealth as in the number of their inhabitants, that the legislature be authorized from time to time to augment the number of representatives. And in case any of the states shall hereafter be divided, or any two or more states united, or any new states created within the limits of the United States, the legislature shall possess authority to

regulate the number of representatives in any of the foregoing cases, upon the principles of their wealth and number of inhabitants."

Sherman: Wished to know on what principles or calculations the report was founded. It did not appear to correspond with any rule of numbers, or of any requisition hitherto adopted by Congress.

Gorham: Some provision of this sort was necessary in the outset.

The number of blacks and whites, with some regard to supposed wealth, was the general guide. Fractions could not be observed. The legislature is to make alterations from time to time, as justice and propriety may require. Two objections prevailed against the rule of one member for every forty thousand inhabitants. The first was that the representation would soon be too numerous, the second that the western states, who may have a different interest, might, if admitted on that principle, by degrees outvote the Atlantic. Both these objections are removed. The number will be small in the first instance, and may be continued so. And the Atlantic states, having the government in their own hands, may take care of their own interest, by dealing out the right of representation in safe proportions to the western states. These were the views of the committee.

L. Martin: Wished to know whether the committee were guided in the ratio by the wealth, or number of inhabitants, of the states, or both; noting its variations from former apportionments by Congress.

G. Morris and Rutledge: Moved to postpone the first paragraph, relating to the number of members to be allowed to each state in the first instance and to take up the second paragraph, authorizing the legislature to alter the number from time to time according to wealth and inhabitants. The motion was agreed to, *nem. con.*

On the question on the second paragraph, taken without any debate: Yeas 9 (Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia); nays 2 (New York, New Jersey).

Sherman: Moved to refer the first part, apportioning the representatives, to a committee of a member from each state.

G. Morris: Seconded the motion; observing that this was the only case in which such committees were useful.

Williamson: Thought it would be necessary to return to the rule of numbers, but that the western states stood on a different footing. If their property should be rated as high as that of the Atlantic states, then their representation ought to hold a like proportion. Otherwise, if their property was not to be equally rated.

G. Morris: The report is little more than a guess. Wealth was not altogether disregarded by the committee. Where it was apparently in favor of one state whose numbers were superior to the numbers of another, by a fraction only, a member extraordinary was allowed to the former; and so vice versa. The committee meant little more than to bring the matter to a point for the consideration of the House.

Read: Asked why Georgia was allowed two members, when her number of inhabitants had stood below that of Delaware?

G. Morris: Such is the rapidity of the population of that state, that before the plan takes effect, it will probably be entitled to two representatives.

Randolph: Disliked the report of the committee, but had been unwilling to object to it. He was apprehensive that, as the number was not to be changed till the national legislature should please, a pretext would never be wanting to postpone alterations, and keep the power in the hands of those possessed of it. He was in favor of the commitment to a member from each state.

Paterson: Considered the proposed estimate for the future according to the combined rules of numbers and wealth as too vague. For this reason New Jersey was against it. He could regard negro slaves in no light but as property. They are no free agents, have no personal liberty, no faculty of acquiring property, but on the contrary are themselves property, and like other property entirely at the will of the master. Has a man in Virginia a number of votes in proportion to the num-

ber of his slaves? And if negroes are not represented in the states to which they belong, why should they be represented in the general government? It is an expedient by which an assembly of certain individuals, chosen by the people, is substituted in place of the inconvenient meeting of the people themselves. If such a meeting of the people was actually to take place, would the slaves vote? They would not. Why then should they be represented? He was also against such an indirect encouragement of the slave trade; observing that Congress, in their act relating to the change of the eighth Article of Confederation, had been ashamed to use the term "slaves," and had substituted a description.

Madison: Reminded Mr. Paterson that his doctrine of representation, which was in its principle the genuine one, must forever silence the pretensions of the small states to an equality of votes with the large ones. They ought to vote in the same proportion in which their citizens would do if the people of all the states were collectively met. He suggested as a proper ground of compromise that in the first branch the states should be represented according to their number of free inhabitants; and in the second, which had for one of its primary objects the guardianship of property, according to the whole number, including slaves.

Butler: Urged warmly the justice and necessity of regarding wealth in the apportionment of representation.

King: Had always expected that, as the southern states are the richest, they would not league themselves with the northern, unless some respect were paid to their superior wealth. If the latter expect those preferential distinctions in commerce, and other advantages which they will derive from the connection, they must not expect to receive them without allowing some advantages in return. Eleven out of thirteen of the states had agreed to consider slaves in the apportionment of taxation; and taxation and representation ought to go together.

On the question for committing the first paragraph of the report to a member from each state: Yeas 9 (Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia,

North Carolina, Georgia); nays 2 (New York, South Carolina). The committee appointed were King, Sherman, Yates, Brearley, G. Morris, Read, Carroll, Madison, Williamson, Rutledge, Houstoun.

*July 10* King: Reported, from the committee yesterday appointed, "that the states at the first meeting of the general legislature, should be represented by sixty-five members, in the following proportions, to wit:—New Hampshire, by 3; Massachusetts, 8; Rhode Island, 1; Connecticut, 5; New York, 6; New Jersey, 4; Pennsylvania, 8; Delaware, 1; Maryland, 6; Virginia, 10; North Carolina, 5; South Carolina, 5; Georgia, 3."

Rutledge: Moved that New Hampshire be reduced from three to two members. Her numbers did not entitle her to three, and it was a poor state.

C. C. Pinckney: Seconds the motion.

King: New Hampshire has probably more than 120,000 inhabitants, and has an extensive country of tolerable fertility. Its inhabitants may therefore be expected to increase fast. He remarked that the four eastern states, having 800,000 souls, have one-third fewer representatives than the four southern states, having not more than 700,000 souls, rating the blacks as five for three. The eastern people will advert to these circumstances, and be dissatisfied. He believed them to be very desirous of uniting with their southern brethren, but did not think it prudent to rely so far on that disposition as to subject them to any gross inequality. He was fully convinced that the question concerning a difference of interests did not lie where it had hitherto been discussed, between the great and small states, but between the southern and eastern. For this reason he had been ready to yield something, in the proportion of representatives, for the security of the southern. No principle would justify the giving them a majority. They were brought as near an equality as was possible. He was not averse to giving them a still greater security, but did not see how it could be done.

C. C. Pinckney: The report before it was committed was more

favorable to the southern states than as it now stands. If they are to form so considerable a minority, and the regulation of trade is to be given to the general government, they will be nothing more than overseers for the northern states. He did not expect the southern states to be raised to a majority of representatives, but wished them to have something like an equality. At present, by the alterations of the committee in favor of the northern states, they are removed further from it than they were before. One member indeed had been added to Virginia, which he was glad of, as he considered her as a southern state. He was glad also that the members of Georgia were increased.

Williamson: Was not for reducing New Hampshire from three to two, but for reducing some others. The southern interest must be extremely endangered by the present arrangement. The northern states are to have a majority in the first instance, and the means of perpetuating it.

Dayton: Observed that the line between northern and southern interest had been improperly drawn; that Pennsylvania was the dividing state, there being six on each side of her.

C. C. Pinckney: Urged the reduction; dwelt on the superior wealth of the southern states, and insisted on its having its due weight in the government.

G. Morris: Regretted the turn of the debate. The states, he found, had many representatives on the floor. Few, he feared, were to be deemed the representatives of America. He thought the southern states have, by the report, more than their share of representation. Property ought to have its weight, but not all the weight. If the southern states are to supply money, the northern states are to spill their blood. Besides, the probable revenue to be expected from the southern states has been greatly overrated. He was against reducing New Hampshire.

Randolph: Was opposed to a reduction of New Hampshire, not because she had a full title to three members, but because it was in his contemplation, first, to make it the duty instead of leaving it to the discretion of the legislature to regulate the

representation by a periodical census; secondly, to require more than a bare majority of votes in the legislature, in certain cases, and particularly in commercial cases.

On the question for reducing New Hampshire from three to two representatives, it passed in the negative: Yeas 2 (North Carolina, South Carolina); nays 8 (Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, Georgia).

C. C. Pinckney and A. Martin: Moved that six representatives instead of five be allowed to North Carolina.

On the question, it passed in the negative: Yeas 3 (North Carolina, South Carolina, Georgia); nays 7 (Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia).

C. C. Pinckney and Butler: Made the same motion in favor of South Carolina.

On the question, it passed in the negative: Yeas 4 (Delaware, North Carolina, South Carolina, Georgia); nays 7 (Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Maryland, Virginia).

C. C. Pinckney and Houston: Moved that Georgia be allowed four instead of three representatives; urging the unexampled celerity of its population.

On the question, it passed in the negative: Yeas 4 (Virginia, North Carolina, South Carolina, Georgia); nays 7 (Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland).

Madison: Moved that the number allowed to each state be doubled. A *majority* of a *quorum* of sixty-five members was too small a number to represent the whole inhabitants of the United States. They would not possess enough of the confidence of the people, and would be too sparsely taken from the people, to bring with them all the local information which would be frequently wanted. Double the number will not be too great, even with the future additions from the new states. The additional expense was too inconsiderable to be regarded in so important a case. And as far as the augmentation

might be unpopular on that score, the objection was overbalanced by its effect on the hopes of a greater number of the popular candidates.

Ellsworth: Urged the objection of expense, and that the greater the number, the more slowly would the business proceed, and the less probably be decided as it ought, at last. He thought the number of representatives too great in most of the state legislatures, and that a large number was less necessary in the general legislature than in those of the states, as its business would relate to a few great national objects only.

Sherman: Would have preferred fifty to sixty-five. The great distance they will have to travel will render their attendance precarious, and will make it difficult to prevail on a sufficient number of fit men to undertake the service. He observed that the expected increase from new states also deserved consideration.

Gerry: Was for increasing the number beyond sixty-five. The larger the number, the less the danger of their being corrupted. The people are accustomed to, and fond of, a numerous representation, and will consider their rights as better secured by it. The danger of excess in the number may be guarded against by fixing a point within which the number shall always be kept.

Mason: Admitted that the objection drawn from the consideration of expense had weight both in itself, and as the people might be affected by it. But he thought it outweighed by the objections against the smallness of the number. Thirty-eight will, he supposes, as being a majority of sixty-five, form a quorum. Twenty will be a majority of thirty-eight. This was certainly too small a number to make laws for America. They would neither bring with them all the necessary information relative to various local interests, nor possess the necessary confidence of the people. After doubling the number, the laws might still be made by so few as almost to be objectionable on that account.

Read: Was in favor of the motion. Two of the states (Delaware and Rhode Island) would have but a single member if the



aggregate number should remain at sixty-five; and in case of accident to either of these, one state would have no representative present to give explanations or informations of its interests or wishes. The people would not place their confidence in so small a number. He hoped the objects of the general government would be much more numerous than seemed to be expected by some gentlemen, and that they would become more and more so. As to the new states, the highest number of representatives for the whole might be limited, and all danger of excess thereby prevented.

**Rutledge:** Opposed the motion. The representatives were too numerous in all the states. The full number allotted to the states may be expected to attend, and the lowest possible quorum should not therefore be considered. The interests of their constituents will urge their attendance too strongly for it to be omitted: and he supposed the general legislature would not sit more than six or eight weeks in the year.

On the question for doubling the number, it passed in the negative: Yeas 2 (Delaware, Virginia); nays 9 (Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Maryland, North Carolina, South Carolina, Georgia).

On the question for agreeing to the apportionment of representatives, as amended by the last committee, it passed in the affirmative: Yeas 9 (Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina); nays 2 (South Carolina, Georgia).

**Broom:** Gave notice to the House that he had concurred with a reserve to himself of an intention to claim for his state an equal voice in the second branch; which he thought could not be denied after this concession of the small states as to the first branch.

#### PERIODICAL RE-ALLOTMENTS OF REPRESENTATIVES

*July 10* **Fundamentals in Convention.** **Randolph:** Moved, as an amendment to the report of the committee of five, "that in order to ascertain the alterations in the population and wealth of the

several states, the legislature should be required to cause a census and estimate to be taken within one year after its first meeting; and every —— years thereafter; and that the legislature arrange the representation accordingly.”

G. Morris: Opposed it, as fettering the legislature too much. Advantage may be taken of it in time of war or the apprehension of it, by new states to extort particular favors. If the mode was to be fixed for taking a census, it might certainly be extremely inconvenient: if unfixed, the legislature may use such a mode as will defeat the object; and perpetuate the inequality. He was always against such shackles on the legislature. They had been found very pernicious in most of the state constitutions. He dwelt much on the danger of throwing such a preponderance into the western scale, suggesting that in time the western people would outnumber the Atlantic states. He wished therefore to put it in the power of the latter to keep a majority of votes in their own hands. It was objected, he said, that if the legislature are left at liberty, they will never readjust the representation. He admitted that this was possible, but he did not think it probable, unless the reasons against a revision of it were very urgent; and in this case, it ought not to be done.

It was moved to postpone the proposition of Randolph, in order to take up the following, viz.: “that the committee of eleven, to whom was referred the report of the committee of five on the subject of representation, be requested to furnish the Convention with the principles on which they grounded the report”; which was disagreed to, South Carolina alone voting in the affirmative.

Sherman: Was against shackling the legislature too much. We ought to choose wise and good men, and then confide in them. July 11

Mason: The greater the difficulty we find in fixing a proper rule of representation, the more unwilling ought we be to throw the task from ourselves on the general legislature. He did not object to the conjectural ratio which was to prevail in the outset; but considered a revision from time to time, according to some permanent and precise standard, as essential to the

fair representation required in the first branch. According to the present population of America, the northern part of it had a right to preponderate, and he could not deny it. But he wished it not to preponderate hereafter, when the reason no longer continued. From the nature of man, we may be sure that those who have power in their hands will not give it up, while they can retain it. On the contrary, we know that they will always, when they can, rather increase it. If the southern states, therefore, should have three-fourths of the people of America within their limits, the northern will hold fast the majority of representatives. One-fourth will govern the three-fourths. The southern states will complain, but they may complain from generation to generation without redress. Unless some principle, therefore, which will do justice to them hereafter shall be inserted in the Constitution, disagreeable as the declaration was to him, he must declare he could neither vote for the system here, nor support it in his state. Strong objections had been drawn from the danger to the Atlantic interests from new western states. Ought we to sacrifice what we know to be right in itself, lest it should prove favorable to states which are not yet in existence? If the western states are to be admitted into the Union as they arise, they must, he would repeat, be treated as equals, and subjected to no degrading discriminations. They will have the same pride, and other passions, which we have; and will either not unite with, or will speedily revolt from, the Union, if they are not in all respects placed on an equal footing with their brethren. It has been said, they will be poor, and unable to make equal contributions to the general treasury. He did not know but that, in time, they would be both more numerous and more wealthy than their Atlantic brethren. The extent and fertility of their soil made this probable; and though Spain might for a time deprive them of the natural outlet for their productions, yet she will, because she must, finally yield to their demands. He urged that numbers of inhabitants, though not always a precise standard of wealth, was sufficiently so for every substantial purpose.

Williamson: Was for making it a duty of the legislature to do what was right, and not leaving it at liberty to do or not to do it. He moved that Mr. Randolph's propositions be postponed in order to consider the following, "that in order to ascertain the alterations that may happen in the population and wealth of the states, a census shall be taken of the free white inhabitants, and three-fifths of those of other descriptions on the first year after this government shall have been adopted, and every —— year thereafter; and that the representation be regulated accordingly."

Randolph: Agreed that Mr. Williamson's proposition should stand in place of his. He observed that the ratio fixed for the first meeting was a mere conjecture; that it placed the power in the hands of that part of America which could not always be entitled to it; that this power would not be voluntarily renounced; and that it was consequently the duty of the Convention to secure its renunciation, when justice might so require, by some constitutional provisions. If equality between great and small states be inadmissible, because in that case unequal numbers of constituents would be represented by equal numbers of votes, was it not equally inadmissible that a larger and more populous district of America should hereafter have less representation than a smaller and less populous district? If a fair representation of the people be not secured, the injustice of the government will shake it to its foundations. What relates to suffrage is justly stated by the celebrated Montesquieu as a fundamental article in republican governments. If the danger suggested by Mr. Gouverneur Morris be real, of advantage being taken of the legislature in pressing moments, it was an additional reason for tying their hands in such a manner that they could not sacrifice their trust to momentary considerations. Congress have pledged the public faith to new states that they shall be admitted on equal terms. They never would, nor ought to, accede on any other. The census must be taken under the direction of the general legislature. The states will be too much interested to take an impartial one for themselves.

Butler and C. C. Pinckney: Insisted that blacks be included in the rule of representation *equally* with the whites; and for that purpose moved that the words "three-fifths" be struck out.

Gerry: Thought that three-fifths of them was, to say the least, the full proportion that could be admitted.

Gorham: This ratio was fixed by Congress as a rule of taxation. Then, it was urged, by the delegates representing the states having slaves, that the blacks were still more inferior to freemen. At present, when the ratio of representation is to be established, we are assured that they are equal to freemen. The arguments on the former occasion had convinced him that three-fifths was pretty near the just proportion, and he should vote according to the same opinion now.

Butler: Insisted that the labor of a slave in South Carolina was as productive and valuable as that of a freeman in Massachusetts; that as wealth was the great means of defense and utility to the nation, they were equally valuable to it with freemen; and that consequently an equal representation ought to be allowed for them in a government which was instituted principally for the protection of property, and was itself to be supported by property.

Mason: Could not agree to the motion, notwithstanding it was favorable to Virginia, because he thought it unjust. It was certain that the slaves were valuable, as they raised the value of land, increased the exports and imports, and of course the revenue, would supply the means of feeding and supporting an army, and might in cases of emergency become themselves soldiers. As in these important respects they were useful to the community at large, they ought not to be excluded from the estimate of representation. He could not, however, regard them as equal to freemen, and could not vote for them as such. He added, as worthy of remark, that the southern states have this peculiar species of property, over and above the other species of property common to all the states.

Williamson: Reminded Mr. Gorham that if the southern states contended for the inferiority of blacks to whites when taxation

was in view, the eastern states, on the same occasion, contended for their equality. He did not, however, either then or now, concur in either extreme, but approved of the ratio of three-fifths.

On Butler's motion, for considering blacks as equal to whites in the apportionment of representation: Yeas 3 (Delaware, South Carolina, Georgia); nays 7 (Massachusetts, Connecticut, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina); New York not on the floor.

G. Morris: Said he had several objections to the proposition of Mr. Williamson. In the first place, it fettered the legislature too much. In the second place, it would exclude some states altogether who would not have a sufficient number to entitle them to a single representation. In the third place, it will not consist with the resolution passed on Saturday last, authorizing the legislature to adjust the representation from time to time on the principles of population and wealth; nor with the principles of equity. If slaves were to be considered as inhabitants, not as wealth, then the said resolution would not be pursued; if as wealth, then why is no other wealth but slaves included? These objections may perhaps be removed by amendments. His great objection was that the number of inhabitants was not a proper standard of wealth. The amazing difference between the comparative numbers and wealth of different countries rendered all reasoning superfluous on the subject. Numbers might with greater propriety be deemed a measure of strength, than of wealth; yet the late defense made by Great Britain against her numerous enemies proved, in the clearest manner, that it is entirely fallacious even in this respect.

King: Thought there was great force in the objections of Mr. Gouverneur Morris. He would, however, accede to the proposition for the sake of doing something.

Rutledge: Contended for the admission of wealth in the estimate by which representation should be regulated. The western states will not be able to contribute in proportion to their numbers; they should not therefore be represented in that proportion. The Atlantic states will not concur in such a

plan. He moved that, "at the end of —— years after the first meeting of the legislature, and of every —— years thereafter, the legislature shall proportion the representation according to the principles of wealth and population."

Sherman: Thought the number of people alone the best rule for measuring wealth as well as representation; and that if the legislature were to be governed by wealth, they would be obliged to estimate it by numbers. He was at first for leaving the matter wholly to the discretion of the legislature; but he had been convinced by the observation of Mr. Randolph and Mr. Mason, that the *periods* and the *rule* of revising the representation ought to be fixed by the Constitution.

Read: Thought the legislature ought not to be too much shackled. It would make the Constitution like religious creeds, embarrassing to those bound to conform to them, and more likely to produce dissatisfaction and schism than harmony and union.

Mason: Objected to Mr. Rutledge's motion as requiring of the legislature something too indefinite and impracticable, and leaving them a pretext for doing nothing.

Wilson: Had himself no objection to leaving the legislature entirely at liberty, but considered wealth as an impracticable rule.

Gorham: If the Convention, who are comparatively so little biased by local views, are so much perplexed, how can it be expected that the legislature hereafter, under the full bias of those views will be able to settle a standard? He was convinced, by the arguments of others and his own reflections, that the Convention ought to fix some standard or other.

G. Morris: The argument of others and his own reflections had led him to a very different conclusion. If we cannot agree on a rule that will be just at this time, how can we expect to find one that will be just in all times to come? Surely those who come after us will judge better of things present than we can of things future. He could not persuade himself that numbers would be a just rule at any time. The remarks of Mr. Mason relative to the western country had not changed his opinion

on that head. Among other objections, it must be apparent, they would not be able to furnish men equally enlightened to share in the administration of our common interests. The busy haunts of men, not the remote wilderness, was the proper school of political talents. If the western people get the power into their hands, they will ruin the Atlantic interests. The back members are always most averse to the best measures. He mentioned the case of Pennsylvania formerly. The lower part of the state had the power in the first instance. They kept it in their own hands, and the country was the better for it. Another objection with him against admitting the blacks into the census was that the people of Pennsylvania would revolt at the idea of being put on a footing with slaves. They would reject any plan that was to have such an effect. Two objections had been raised against leaving the adjustment of the representation, from time to time, to the discretion of the legislature. The first was, they would be unwilling to revise it at all. The second, that by referring to *wealth*, they would be bound by a rule which, if willing, they would be unable to execute. The first objection distrusts their fidelity. But if their duty, their honor, and their oaths, will not bind them, let us not put into their hands our liberty, and all our other great interests; let us have no government at all. In the second place, if these ties will bind them, we need not distrust the practicability of the rule. It was followed in part by the committee in the apportionment of representatives yesterday reported to the House. The best course that could be taken would be to leave the interests of the people to the representatives of the people.

Madison: Was not a little surprised to hear this implicit confidence urged by a member who, on all occasions, had inculcated so strongly the political depravity of men, and the necessity of checking one vice and interest by opposing to them another vice and interest. If the representatives of the people would be bound by the ties he had mentioned, what need was there of a Senate? What of a revisionary power? But his reasoning was not only inconsistent with his former reasoning, but with itself. At the same time that he recommended this im-



plicit confidence to the southern states in the northern majority, he was still more zealous in exhorting all to a jealousy of a western majority. To reconcile the gentleman with himself, it must be imagined that he determined the human character by the points of the compass. The truth was that all men having power ought to be distrusted, to a certain degree. The case of Pennsylvania had been mentioned, where it was admitted that those who were possessed of the power in the original settlement never admitted the new settlements to a due share of it. England was a still more striking example. The power there had long been in the hands of the boroughs—of the minority—who had opposed and defeated every reform which had been attempted. Virginia was, in a less degree, another example. With regard to the western states, he was clear and firm in opinion that no unfavorable distinctions were admissible, either in point of justice or policy. He thought also that the hope of contributions to the treasury from them had been much underrated. Future contributions, it seemed to be understood on all hands, would be principally levied on imports and exports. The extent and fertility of the western soil would for a long time give to agriculture a preference over manufactures. Trials would be repeated till some articles could be raised from it that would bear a transportation to places where they could be exchanged for imported manufactures. Whenever the Mississippi should be opened to them, which would of necessity be the case as soon as their population would subject them to any considerable share of the public burden, imposts on their trade could be collected with less expense and greater certainty than on that of the Atlantic states. In the meantime, as their supplies must pass through the *Atlantic states*, their contributions would be levied in the same manner with those of the Atlantic states. He could not agree that any substantial objection lay against fixing numbers for the perpetual standard of representation. It was said that representation and taxation were to go together; that taxation and wealth ought to go together; that population and wealth were not measures of each other. He admitted that in different climates, under dif-

ferent forms of government, and in different stages of civilization, the inference was perfectly just. He would admit that in no situation numbers of inhabitants were an accurate measure of wealth. He contended, however, that in the United States it was sufficiently so for the object in contemplation. Although their climate varied considerably, yet as the governments, the laws, and the manners of all, were nearly the same, and the intercourse between different parts perfectly free, population, industry, arts, and the value of labor, would constantly tend to equalize themselves. The value of labor might be considered as the principal criterion of wealth and ability to support taxes; and this would find its level in different places, where the intercourse should be easy and free, with as much certainty as the value of money or any other thing. Wherever labor would yield most, people would resort, till the competition should destroy the inequality. Hence it is that the people are constantly swarming from the more to the less populous places—from Europe to America—from the northern and middle parts of the United States to the southern and western. They go where land is cheaper because there labor is dearer. If it be true that the same quantity of produce raised on the banks of the Ohio is of less value than on the Delaware, it is also true that the same labor will raise twice or thrice the quantity in the former than it will raise in the latter situation.

Mason: Agreed with Mr. G. Morris that we ought to leave the interests of the people to the representatives of the people; but the objection was that the legislature would cease to be the representatives of the people. It would continue so no longer than the states now containing a majority of the people should retain that majority. As soon as the southern and western population should predominate, which must happen in a few years, the power would be in the hands of the minority, and would never be yielded to the majority, unless provided for by the Constitution.

On the question for postponing Williamson's motion, in order to consider that of Rutledge, it passed in the negative: Yeas 5 (Massachusetts, Pennsylvania, Delaware, South Carolina,

Georgia); nays 5 (Connecticut, New Jersey, Maryland, Virginia, North Carolina).

On the question on the first clause of Williamson's motion, as to taking a census of the *free* inhabitants, it passed in the affirmative: Yeas 6 (Massachusetts, Connecticut, New Jersey, Pennsylvania, Virginia, North Carolina); nays 4 (Delaware, Maryland, South Carolina, Georgia).

The next clause as to three-fifths of the negroes being considered: King: Being much opposed to fixing numbers as the rule of representation, was particularly so on account of the blacks. He thought the admission of them along with whites at all, would excite great discontent among the states having no slaves. He had never said as to any particular point that he would in no event acquiesce in and support it; but he would say that if in any case such a declaration was to be made by him, it would be in this. He remarked that in the temporary allotment of representatives made by the committee, the southern states had received more than the number of their white and three-fifths of their black inhabitants entitled them to.

Sherman: South Carolina had no more beyond her proportion than New York and New Hampshire; nor either of them more than was necessary in order to avoid fractions, or reducing them below their proportion. Georgia had more; but the rapid growth of that state seemed to justify it. In general, the allotment might not be just, but considering all circumstances, he was satisfied with it.

Gorham: Supported the propriety of establishing numbers as the rule. He said that in Massachusetts, estimates had been taken in the different towns, and that persons had been curious enough to compare these estimates with the respective numbers of people; and it had been found, even including Boston, that the most exact proportion prevailed between numbers and property. He was aware that there might be some weight in what had fallen from his colleague as to the umbrage which might be taken by the people of the eastern states. But he recollected that when the proposition of Congress for chang-

ing the eighth Article of the Confederation was before the legislature of Massachusetts, the only difficulty then was to satisfy them that the negroes ought not to have been counted equally with the whites, instead of being counted in the ratio of three-fifths only.

Wilson: Did not well see on what principle the admission of blacks in the proportion of three-fifths could be explained. Are they admitted as citizens—then why are they not admitted on an equality with white citizens? Are they admitted as property—then why is not other property admitted into the computation? These were difficulties, however, which he thought must be overruled by the necessity of compromise. He had some apprehensions also, from the tendency of the blending of the blacks with the whites, to give disgust to the people of Pennsylvania, as had been intimated by his colleague (Mr. Gouverneur Morris). But he differed from him in thinking numbers of inhabitants so incorrect a measure of wealth. He had seen the western settlements of Pennsylvania, and on a comparison of them with the city of Philadelphia could discover little other difference than that property was more unequally divided here than there. Taking the same number in the aggregate in the two situations, he believed there would be little difference in their wealth and ability to contribute to the public wants.

G. Morris: Was compelled to declare himself reduced to the dilemma of doing injustice to the southern states or to human nature, and he must therefore do it to the former. For he could never agree to give such encouragement to the slave trade as would be given by allowing them a representation for their negroes, and he did not believe those states would ever confederate on terms that would deprive them of that trade.

On the question for agreeing to include three-fifths of the blacks: Yeas 4 (Connecticut, Virginia, North Carolina, Georgia); nays 6 (Massachusetts, New Jersey, Pennsylvania, Delaware, Maryland, South Carolina).

On the question as to taking the census “the first year after the

meeting of the legislature": Yeas 7 (Massachusetts, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina); nays 3 (Connecticut, Maryland, Georgia).

On filling the blank for the periodical census with fifteen years:

Agreed to, *nem. con.*

Madison: Moved to add, after "fifteen years," the words "at least," that the legislature might anticipate when circumstances were likely to render a particular year inconvenient.

On this motion for adding "at least," it passed in the negative, the states being equally divided: Yeas 5 (Massachusetts, Virginia, North Carolina, South Carolina, Georgia); nays 5 (Connecticut, New Jersey, Pennsylvania, Delaware, Maryland).

A change in the phraseology of the other clause, so as to read "and the legislature shall alter or augment the representation accordingly," was agreed to, *nem. con.*

On the question on the whole resolution of Williamson, as amended: Yeas 0; nays 9 (Massachusetts, Connecticut, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia); so it was rejected unanimously.

July 12

G. Morris: Moved to add to the clause empowering the legislature to vary the representation according to the principles of wealth and numbers of inhabitants, a proviso, "that taxation shall be in proportion to representation."

Butler: Contended again that representation should be according to the full number of inhabitants, including all the blacks; admitting the justice of Mr. Gouverneur Morris's motion.

Mason: Also admitted the justice of the principle, but was afraid embarrassments might be occasioned to the legislature by it. It might drive the legislature to the plan of requisitions.

G. Morris: Admitted that some objections lay against his motion, but supposed they would be removed by restraining the rule to *direct* taxation. With regard to indirect taxes on *exports* and imports, and on consumption, the rule would be inapplicable. Notwithstanding what had been said to the contrary, he was persuaded that the imports and consumption were pretty nearly equal throughout the Union.

C. C. Pinckney: Liked the idea. He thought it so just that it

could not be objected to; but foresaw that if the revision of the census was left to the discretion of the legislature, it would never be carried into execution. The rule must be fixed, and the execution of it enforced by the Constitution. He was alarmed at what was said yesterday concerning the negroes. He was now again alarmed at what had been thrown out concerning the taxing of exports. South Carolina has in one year exported to the amount of 600,000 pounds sterling, all which was the fruit of the labor of her blacks. Will she be represented in proportion to this amount? She will not. Neither ought she then to be subject to a tax on it. He hoped a clause would be inserted in the system, restraining the legislature from taxing exports.

Wilson: Approved the principle, but could not see how it could be carried into execution, unless restrained to direct taxation.

G. Morris: Having so varied his motion by inserting the word "direct," it passed, *nem. con.*, as follows: "provided always that direct taxation ought to be proportioned to representation."

Davie: Said it was high time now to speak out. He saw that it was meant by some gentlemen to deprive the southern states of any share of representation for their blacks. He was sure that North Carolina would never confederate on any terms that did not rate them at least as three-fifths. If the eastern states meant, therefore, to exclude them altogether, the business was at an end.

Johnson: Thought that wealth and population were the true, equitable rules of representation; but he conceived that these two principles resolved themselves into one, population being the best measure of wealth. He concluded, therefore, that the number of people ought to be established as the rule, and that all descriptions, including blacks *equally* with the whites, ought to fall within the computation. As various opinions had been expressed on the subject, he would move that a committee might be appointed to take them into consideration and report them.

G. Morris: It had been said that it is high time to speak out. As

one member, he would candidly do so. He came here to form a compact for the good of America. He was ready to do so with all the states. He hoped, and believed, that all would enter into such a compact. If they would not, he was ready to join with any states that would. But as the compact was to be voluntary, it is in vain for the eastern states to insist on what the southern states will never agree to. It is equally vain for the latter to require what the other states can never admit; and he verily believed the people of Pennsylvania will never agree to a representation of negroes. What can be desired by these states more than has been already proposed—that the legislature shall from time to time regulate representation according to population and wealth?

C. C. Pinckney: Desired that the rule of wealth should be ascertained and not left to the pleasure of the legislature; and that property in slaves should not be exposed to danger under a government instituted for the protection of property.

The first clause in the report of the first grand committee was postponed.

Ellsworth: In order to carry into effect the principle established, moved to add to the last clause adopted by the House the words following, “and that the rule of contribution by direct taxation, for the support of the government of the United States, shall be the number of white inhabitants, and three-fifths of every other description in the several states, until some other rule that shall more accurately ascertain the wealth of the several states can be devised and adopted by the legislature.”

Butler: Seconded the motion, in order that it might be committed.

Randolph: Was not satisfied with the motion. The danger will be revived that the ingenuity of the legislature may evade or pervert the rule so as to perpetuate the power where it shall be lodged in the first instance. He proposed, in lieu of Mr. Ellsworth’s motion, “that in order to ascertain the alterations in representation that may be required, from time to time, by changes in the relative circumstances of the states, a census

shall be taken within two years from the first meeting of the general legislature of the United States, and once within the term of every —— years afterwards, of all the inhabitants, in the manner and according to the ratio recommended by Congress, in their resolution of the eighteenth day of April, 1783 (rating the blacks at three-fifths of their number); and that the legislature of the United States shall arrange the representation accordingly." He urged strenuously that express security ought to be provided for including slaves in the ratio of representation. He lamented that such a species of property existed. But as it did exist, the holders of it would require this security. It was perceived that the design was entertained by some of excluding slaves altogether; the legislature therefore ought not to be left at liberty.

Ellsworth: Withdraws his motion, and seconds that of Mr. Randolph.

Wilson: Observed that less umbrage would perhaps be taken against an admission of the slaves into the rule of representation if it should be so expressed as to make them indirectly only an ingredient in the rule, by saying that they should enter into the rule of taxation; and as representation was to be according to taxation, the end would be equally attained. He accordingly moved, and was seconded, so to alter the last clause adopted by the House that, together with the amendment proposed, the whole should read as follows: "provided always that the representation ought to be proportioned according to direct taxation; and in order to ascertain the alterations in the direct taxation which may be required from time to time by the changes in the relative circumstances of the states, Resolved, that a census be taken within two years from the first meeting of the legislature of the United States, and once within the term of every —— years afterwards, of all the inhabitants of the United States, in the manner and according to the ratio recommended by Congress in their resolution of the eighteenth day of April, 1783; and that the legislature of the United States shall proportion the direct taxation accordingly."



King: Although this amendment varies the aspect somewhat, he had still two powerful objections against tying down the legislature to the rule of numbers—first, they were at this time an uncertain index of the relative wealth of the states; secondly, if they were a just index at this time, it cannot be supposed always to continue so. He was far from wishing to retain any unjust advantage whatever in one part of the republic. If justice was not the basis of the connection, it could not be of long duration. He must be short-sighted indeed who does not foresee that, whenever the southern states shall be more numerous than the northern, they can and will hold a language that will awe them into justice. If they threaten to separate now in case injury shall be done them, will their threats be less urgent or effectual when force shall back their demands? Even in the intervening period, there will be no point of time at which they will not be able to say, do us justice or we will separate. He urged the necessity of placing confidence to a certain degree in every government, and did not conceive that the proposed confidence, as to a periodical readjustment of the representation, exceeded that degree.

C. Pinckney: Moved to amend Mr. Randolph's motion so as to make "blacks equal to the whites in the ratio of representation." This, he urged, was nothing more than justice. The blacks are the laborers, the peasants, of the southern states. They are as productive of pecuniary resources as those of the northern states. They add equally to the wealth and, considering money as the sinew of war, to the strength of the nation. It will also be politic with regard to the northern states, as taxation is to keep pace with representation.

C. C. Pinckney: Moves to insert "six years" instead of "two," as the period, computing from the first meeting of the legislature, within which the first census should be taken.

On this question for inserting "six years" instead of "two," in the proposition of Wilson, it passed in the affirmative: Yeas 5 (Connecticut, New Jersey, Pennsylvania, Maryland, South Carolina); nays 4 (Massachusetts, Virginia, North Carolina, Georgia); divided 1 (Delaware).

On the question for filling the blank for the periodical census with "twenty years," it passed in the negative: Yeas 3 (Connecticut, New Jersey, Pennsylvania); nays 7 (Massachusetts, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia).

On the question for "ten years," it passed in the affirmative: Yeas 8 (Massachusetts, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia); nays 2 (Connecticut, New Jersey).

On C. Pinckney's motion, for rating blacks as equal to whites, instead of as three-fifths: Yeas 2 (South Carolina, Georgia); nays 8 (Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina).

Randolph's proposition, as varied by Wilson, being read for taking the question on the whole:

Gerry: Urged that the principle of it could not be carried into execution, as the states were not to be taxed as states. With regard to taxes on imposts, he conceived they would be no more productive where there were no slaves than where there were; the consumption being greater.

Ellsworth: In case of a poll tax, there would be no difficulty. But there would probably be none. The sum allotted to a state may be levied without difficulty, according to the plan used by the state in raising its own supplies.

On the question on the whole proposition, as proportioning representation to direct taxation, and both to the white and three-fifths of the black inhabitants, and requiring a census within six years, and within every ten years afterwards: Yeas 6 (Connecticut, Pennsylvania, Maryland, Virginia, North Carolina, Georgia); nays 2 (New Jersey, Delaware); divided 2 (Massachusetts, South Carolina).

It being moved to postpone the clause in the report of the committee of eleven as to the originating of money bills in the *first* branch, in order to take up the following, "that in the second branch each state shall have an equal voice":

Gerry: Moved to add, as an amendment to the last clause agreed to by the House, "that from the first meeting of the legislature

July 13

of the United States till a census shall be taken, all moneys to be raised for supplying the public treasury by direct taxation shall be assessed on the inhabitants of the several states according to the number of their representatives respectively in the first branch." He said this would be as just before as after the census, according to the general principle that taxation and representation ought to go together.

Williamson: Feared that New Hampshire will have reason to complain. Three members were allotted to her as a liberal allowance, for this reason among others, that she might not suppose any advantage to have been taken of her absence. As she was still absent and had no opportunity of deciding whether she would choose to retain the number on the condition of her being taxed in proportion to it, he thought the number ought to be reduced from three to two, before the question was taken on Mr. Gerry's motion.

Read: Could not approve of the proposition. He had observed, he said, in the committee a backwardness in some of the members from the large states to take their full proportion of representatives. He did not then see the motive. He now suspects it was to avoid their due share of taxation. He had no objection to a just and accurate adjustment of representation and taxation to each other.

G. Morris and Madison: Answered that the charge itself involved an acquittal; since, notwithstanding the augmentation of the number of members allotted to Massachusetts and Virginia, the motion for proportioning the burdens thereto was made by a member from the former state, and was approved by Mr. Madison, from the latter, who was on the committee. Mr. Gouverneur Morris said that he thought Pennsylvania had her due share in eight members, and he could not in candor ask for more. Mr. Madison said that having always conceived that the difference of interest in the United States lay not between the large and small, but the northern and southern states, and finding that the number of members allotted to the northern states was greatly superior, he should have preferred an addition of two members to the southern states, to wit, one

to North and one to South Carolina, rather than of one member to Virginia. He liked the present motion because it tended to moderate the views both of the opponents and advocates for rating very high the negroes.

Ellsworth: Hoped the proposition would be withdrawn. It entered too much into detail. The general principle was already sufficiently settled. As fractions cannot be regarded in apportioning the *number of representatives*, the rule will be unjust, until an actual census shall be made. After that, taxation may be precisely proportioned, according to the principle established, to the *number of inhabitants*.

Wilson: Hoped the motion would not be withdrawn. If it should, it will be made from another quarter. The rule will be as reasonable and just before as after a census. As to fractional numbers, the census will not destroy but ascertain them. And they will have the same effect after as before the census, for as he understands the rule, it is to be adjusted not to the number of *inhabitants* but of *representatives*.

Sherman: Opposed the motion. He thought the legislature ought to be left at liberty; in which case they would probably conform to the principles observed by Congress.

Mason: Did not know that Virginia would be a loser by the proposed regulation, but had some scruple as to the justice of it. He doubted much whether the conjectural rule which was to precede the census would be as just as it would be rendered by an actual census.

Ellsworth and Sherman: Moved to postpone the motion of Gerry. On the question, it passed in the negative: Yeas 4 (Connecticut, New Jersey, Delaware, Maryland); nays 6 (Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia).

On the question on Gerry's motion, it passed in the negative, the states being equally divided: Yeas 5 (Massachusetts, *Pennsylvania*, North Carolina, South Carolina, Georgia); nays 5 (Connecticut, New Jersey, Delaware, Maryland, *Virginia*).

Gerry: Finding that the loss of the question had proceeded from an objection, with some, to the proposed assessment of direct

taxes on the *inhabitants* of the states, which might restrain the legislature to a poll tax, moved his proposition again, but so varied as to authorize the assessment on the *states*, which leaves the mode to the legislature, viz., "that from the first meeting of the legislature of the United States, until a census shall be taken, all moneys for supplying the public treasury by direct taxation shall be raised from the said several states, according to the number of their representatives respectively in the first branch."

On this varied question, it passed in the affirmative: Yeas 5 (Massachusetts, *Virginia*, North Carolina, South Carolina, Georgia); nays 4 (Connecticut, New Jersey, Delaware, Maryland); divided 1 (*Pennsylvania*).

On the motion of Mr. Randolph, the vote of Monday last, authorizing the legislature to adjust, from time to time, the representation upon the principles of *wealth* and numbers of inhabitants, was reconsidered by common consent, in order to strike out *wealth* and adjust the resolution to that requiring periodical revisions according to the number of whites and three-fifths of the blacks. The motion was in the words following: "But as the present situation of the states may probably alter in the number of their inhabitants, that the legislature of the United States be authorized, from time to time, to apportion the number of representatives; and in case any of the states shall hereafter be divided, or any two or more states united, or new states created within the limits of the United States, the legislature of the United States shall possess authority to regulate the number of representatives in any of the foregoing cases, upon the principle of their number of inhabitants, according to the provisions hereafter mentioned."

G. Morris: Opposed the alteration as leaving still an incoherence. If negroes were to be viewed as inhabitants, and the revision was to proceed on the principle of numbers of inhabitants, they ought to be added in their entire number, and not in the proportion of three-fifths. If as property, the word *wealth* was right, and striking it out would produce the very inconsistency which it was meant to get rid of. The train of business, and

the late turn which it had taken, had led him, he said, into deep meditation on it, and he would candidly state the result. A distinction had been set up, and urged, between the northern and southern states. He had hitherto considered this doctrine as heretical. He still thought the distinction groundless. He sees, however, that it is persisted in; and the southern gentlemen will not be satisfied unless they see the way open to their gaining a majority in the public councils. The consequences of such a transfer of power from the maritime to the interior and landed interest will, he foresees, be such an oppression to commerce, that he shall be obliged to vote for the vicious principle of equality in the second branch, in order to provide some defense for the northern states against it. But to come more to the point, either this distinction is fictitious or real; if fictitious, let it be dismissed, and let us proceed with due confidence. If it be real, instead of attempting to blend incompatible things, let us at once take a friendly leave of each other. There can be no end of demands for security, if every particular interest is to be entitled to it. The eastern states may claim it for their fishery, and for other objects, as the southern states claim it for their peculiar objects. In this struggle between the two ends of the Union, what part ought the middle states, in point of policy, to take? To join their eastern brethren, according to his idea. If the southern states get the power into their hands, and be joined, as they will be, with the interior country, they will inevitably bring on a war with Spain for the Mississippi. This language is already held. The interior country, having no property nor interest exposed on the sea, will be little affected by such a war. He wished to know what security the northern and middle states will have against this danger. It has been said that North Carolina, South Carolina, and Georgia only will in a little time have a majority of the people of America. They must in that case include the great exterior country, and everything was to be apprehended from their getting the power into their hands.

Butler: The security the southern states want is that their negroes may not be taken from them, which some gentlemen within or

without doors have a very good mind to do. It was not supposed that North Carolina, South Carolina, and Georgia would have more people than all the other states, but many more relatively to the other states, than they now have. The people and strength of America are evidently bearing southwardly and south westwardly.

Wilson: If a general declaration would satisfy any gentleman, he had no indisposition to declare his sentiments. Conceiving that all men, wherever placed, have equal rights, and are equally entitled to confidence, he viewed without apprehension the period when a few states should contain the superior number of people. The majority of people, wherever found, ought in all questions, to govern the minority. If the interior country should acquire this majority, it will not only have the right but will avail itself of it, whether we will or no. This jealousy misled the policy of Great Britain with regard to America. The fatal maxims espoused by her were that the colonies were growing too fast and that their growth must be stinted in time. What were the consequences? First, enmity on our part, then actual separation. Like consequences will result on the part of the interior settlements, if like jealousy and policy be pursued on ours. Further, if numbers be not a proper rule, why is not some better rule pointed out? No one has yet ventured to attempt it. Congress have never been able to discover a better. No state, as far as he had heard, had suggested any other. In 1783, after elaborate discussion of a measure of wealth, all were satisfied then, as they now are, that the rule of numbers does not differ much from the combined rule of numbers and wealth. Again, he could not agree that property was the sole or primary object of government and society. The cultivation and improvement of the human mind was the most noble object. With respect to this object, as well as to other *personal* rights, numbers were surely the natural and precise measure of representation. And with respect to property, they could not vary much from the precise measure. In no point of view, however, could the establishment of numbers, as the rule of representation in the first branch, vary his

opinion as to the impropriety of letting a vicious principle into the second branch.

On the question to strike out "wealth," and to make the change as moved by Mr. Randolph, it passed in the affirmative: Yeas 9 (Massachusetts, Connecticut, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia); nays 0; divided 1 (Delaware).

Read: Moved to insert, after the word "divided," "or enlarged by addition of territory"; which was agreed to, *nem. con.*



CHAPTER 11  
REPRESENTATION IN THE FEDERAL  
LEGISLATURE—*Concluded*

REPRESENTATION OF NEW STATES

*July 14*    **Fundamentals in Convention.** L. Martin: Called for the question on the whole report, including the parts relating to the origination of money bills, and the equality of votes in the second branch.

Gerry: Wished, before the question should be put, that the attention of the House might be turned to the dangers apprehended from western states. He was for admitting them on liberal terms, but not for putting ourselves into their hands. They will, if they acquire power, like all men, abuse it. They will oppress commerce and drain our wealth into the western country. To guard against these consequences, he thought it necessary to limit the number of new states to be admitted into the Union in such a manner that they should never be able to outnumber the Atlantic states. He accordingly moved "that in order to secure the liberties of the states already confederated, the number of representatives in the first branch, of the states which shall hereafter be established, shall never exceed in number the representatives from such of the states as shall accede to this Confederation."

King: Seconded the motion.

Sherman: Thought there was no probability that the number of future states would exceed that of the existing states. If the event should ever happen, it was too remote to be taken into

consideration at this time. Besides, we are providing for our posterity, for our children and our grandchildren, who would be as likely to be citizens of new western states as of the old states. On this consideration alone, we ought to make no such discrimination as was proposed by the motion.

Gerry: If some of our children should remove, others will stay behind, and he thought it incumbent on us to provide for their interests. There was a rage of emigration from the eastern states to the western country, and he did not wish those remaining behind to be at the mercy of the emigrants. Besides, foreigners are resorting to that country, and it is uncertain what turn things may take there.

On the question for agreeing to the motion of Gerry, it passed in the negative: Yeas 4 (Massachusetts, Connecticut, Delaware, Maryland); nays 5 (New Jersey, Virginia, North Carolina, South Carolina, Georgia); divided 1 (Pennsylvania).

#### REPRESENTATION IN THE SENATE

**Fundamentals in Convention.** Rutledge: Proposed to reconsider the two propositions touching the originating of money bills in the first, and the equality of votes in the second branch. *July 14*

Sherman: Was for the question on the whole at once. It was, he said, a conciliatory plan, it had been considered in all its parts, a great deal of time had been spent upon it, and if any part should now be altered, it would be necessary to go over the whole ground again.

L. Martin: Urged the question on the whole. He did not like many parts of it. He did not like having two branches, nor the inequality of votes in the first branch. He was willing, however, to make trial of the plan, rather than do nothing.

Wilson: Traced the progress of the report through its several stages, remarking that when on the question concerning an equality of votes, the House was divided, our constituents, had they voted as their representatives did, would have stood as two-thirds against the equality and one-third only in favor of it. This fact would ere long be known, and it would appear

that this fundamental point has been carried by one-third against two-thirds. What hopes will our constituents entertain when they find that the essential principles of justice have been violated in the outset of the government? As to the privilege of originating money bills, it was not considered by any as of much moment, and by many as improper in itself. He hoped both clauses would be reconsidered. The equality of votes was a point of such critical importance that every opportunity ought to be allowed for discussing and collecting the mind of the Convention upon it.

L. Martin: Denies that there were two-thirds against the equality of votes. The states that please to call themselves large are the weakest in the Union. Look at Massachusetts—look at Virginia—are they efficient states? He was for letting a separation take place if they desired it. He had rather there should be two confederacies than one founded on any other principle than an equality of votes in the second branch at least.

Wilson: Was not surprised that those who say that a minority does more than a majority, should say the minority is stronger than the majority. He supposed the next assertion will be that they are richer also; though he hardly expected it would be persisted in, when the states shall be called on for taxes and troops.

Gerry: Also animadverted on Mr. L. Martin's remarks on the weakness of Massachusetts. He favored the reconsideration, with a view not of destroying the equality of votes but of providing that the states should vote per capita, which, he said, would prevent the delays and inconveniences that had been experienced in Congress, and would give a national aspect and spirit to the management of business. He did not approve of a reconsideration of the clause relating to money bills. It was of great consequence. It was the cornerstone of the accommodation. If any member of the Convention had the exclusive privilege of making propositions, would any one say that it would give him no advantage over other members? The report was not altogether to his mind; but he would agree to it as it stood rather than throw it out altogether.

The reconsideration being tacitly agreed to:

C. Pinckney: Moved that, instead of an equality of votes, the states should be represented in the second branch as follows: New Hampshire by two members; Massachusetts, four; Rhode Island, one; Connecticut, three; New York, three; New Jersey, two; Pennsylvania, four; Delaware, one; Maryland, three; Virginia, five; North Carolina, three; South Carolina, three; Georgia, two; making in the whole, thirty-six.

Wilson: Seconds the motion.

Dayton: The smaller states can never give up their equality. For himself, he would in no event yield that security for their rights.

Sherman: Urged the equality of votes, not so much as a security for the small states as for the state governments, which could not be preserved unless they were represented, and had a negative in the general government. He had no objection to the members in the second branch voting per capita, as had been suggested by Mr. Gerry.

Madison: Concurred in this motion of Mr. Pinckney as a reasonable compromise.

Gerry: Said he should like the motion, but could see no hope of success. An accommodation must take place, and it was apparent from what had been seen that it could not do so on the ground of the motion. He was utterly against a partial confederacy, leaving other states to accede or not accede, as had been intimated.

King: Said it was always with regret that he differed from his colleagues, but it was his duty to differ from Mr. Gerry on this occasion. He considered the proposed government as substantially and formally a general and national government over the people of America. There never will be a case in which it will act as a federal government on the states and not on the individual citizens. And is it not a clear principle that in a free government, those who are to be the objects of a government ought to influence the operations of it? What reason can be assigned why the same rule of representation should not prevail in the second as in the first branch? He could

conceive none. On the contrary, every view of the subject that presented itself seemed to require it. Two objections had been raised against it, drawn, first, from the terms of the existing compact; secondly, from a supposed danger to the smaller states. As to the first objection, he thought it inapplicable. According to the existing Confederation, the rule by which the public burdens is to be apportioned is *fixed*, and must be pursued. In the proposed government, it cannot be fixed, because indirect taxation is to be substituted. The legislature, therefore, will have full discretion to impose taxes in such modes and proportions as they may judge expedient. As to the second objection, he thought it of as little weight. The general government can never wish to intrude on the state governments. There could be no temptation. None had been pointed out. In order to prevent the interference of measures which seemed most likely to happen, he would have no objection to throwing all the state debts into the federal debt, making one aggregate debt of about \$70,000,000, and leaving it to be discharged by the general government. According to the idea of securing the state governments, there ought to be three distinct legislative branches. The second was admitted to be necessary, and was actually meant, to check the first branch, to give more wisdom, system and stability to the government; and ought clearly, as it was to operate on the people, to be proportioned to them. For the third purpose of securing the states, there ought then to be a third branch, representing the states as such, and guarding, by equal votes, their rights and dignities. He would not pretend to be as thoroughly acquainted with his immediate constituents as his colleagues, but it was his firm belief that Massachusetts would never be prevailed on to yield to an equality of votes. In New York (he was sorry to be obliged to say anything relative to that state in the absence of its representatives, but the occasion required it)—in New York he had seen that the most powerful argument used by the considerate opponents to the grant of the impost to Congress, was pointed against the vicious constitution of Congress with regard to representation and suffrage.

He was sure that no government would last that was not founded on just principles. He preferred the doing of nothing, to an allowance of an equal vote to all the states. It would be better, he thought, to submit to a little more confusion and convulsion, than to submit to such an evil. It was difficult to say what the views of different gentlemen might be. Perhaps there might be some who thought no government co-extensive with the United States could be established with a hope of its answering the purpose. Perhaps there might be other fixed opinions incompatible with the object we are pursuing. If there were, he thought it but candid that gentlemen should speak out that we might understand one another.

Strong: The Convention had been much divided in opinion. In order to avoid the consequences of it, an accommodation had been proposed. A committee had been appointed; and though some of the members of it were averse to an equality of votes, a report had been made in favor of it. It is agreed on all hands that Congress are nearly at an end. If no accommodation takes place, the Union itself must soon be dissolved. It has been suggested that if we cannot come to any general agreement, the principal states may form and recommend a scheme of government. But will the small states, in that case, ever accede to it? Is it probable that the large states themselves will, under such circumstances, embrace and ratify it? He thought the small states had made a considerable concession, in the article of money bills, and that they might naturally expect some concessions on the other side. From this view of the matter, he was compelled to give his vote for the report taken altogether.

Madison: Expressed his apprehensions that if the proper foundation of government was destroyed by substituting an equality in place of a proportional representation, no proper superstructure would be raised. If the small states really wish for a government armed with the powers necessary to secure their liberties, and to enforce obedience on the larger members as well as themselves, he could not help thinking them extremely mistaken in the means. He reminded them of the consequences

of laying the *existing Confederation* on improper principles. All the principal parties to its compilation joined immediately in mutilating and fettering the government, in such a manner that it has disappointed every hope placed on it. He appealed to the doctrine and arguments used by themselves on a former occasion. It had been very properly observed (by Mr. Paterson) that representation was an expedient by which the meeting of the people themselves was rendered unnecessary; and that the representatives ought therefore to bear a proportion to the votes which their constituents, if convened, would respectively have. Was not this remark as applicable to one branch of the representation as to the other? But it had been said that the government would, in its operation, be partly federal, partly national; that although in the latter respect the representatives of the people ought to be in proportion to the people, yet in the former, it ought to be according to the number of states. If there was any solidity in this distinction, he was ready to abide by it; if there was none, it ought to be abandoned. In all cases where the general government is to act on the people, let the people be represented, and the votes be proportional. In all cases where the government is to act on the states as such, in like manner as Congress now acts on them, let the states be represented and the votes be equal. This was the true ground of compromise, if there was any ground at all. But he denied that there was any ground. He called for a single instance in which the general government was not to operate on the people individually. The practicability of making laws, with coercive sanctions, for the states as political bodies, had been exploded on all hands. He observed that the people of the large states would, in some way or other, secure to themselves a weight proportioned to the importance accruing from their superior numbers. If they could not effect it by a proportional representation in the government, they would probably accede to no government which did not, in a great measure, depend for its efficacy on their voluntary cooperation; in which case they would indirectly secure their object. The existing Confederacy proved that where the acts of the general

government were to be executed by the particular governments, the latter had a weight in proportion to their importance. No one would say that, either in Congress or out of Congress, Delaware had equal weight with Pennsylvania. If the latter was to supply ten times as much money as the former and no compulsion could be used, it was of ten times more importance, that she should voluntarily furnish the supply. In the Dutch confederacy, the votes of the provinces were equal. But Holland, which supplies about half the money, governed the whole republic. He enumerated the objections against an equality of votes in the second branch, notwithstanding the proportional representation in the first: (1) the minority could negative the will of the majority of the people; (2) they could extort measures, by making them a condition of their assent to other necessary measures; (3) they could obtrude measures on the majority, by virtue of the peculiar powers which would be vested in the Senate; (4) the evil, instead of being cured by time, would increase with every new state that should be admitted, as they must all be admitted on the principle of equality; (5) the perpetuity it would give to the preponderance of the northern against the southern scale was a serious consideration. It seemed now to be pretty well understood that the real difference of interests lay not between the large and small but between the northern and southern states. The institution of slavery, and its consequences, formed the line of discrimination. There were five states on the southern, eight on the northern side of this line. Should a proportional representation take place, it was true, the northern would still outnumber the other; but not in the same degree, at this time; and every day would tend towards an equilibrium.

Wilson: Would add a few words only. If equality in the second branch was an error that time would correct, he should be less anxious to exclude it, being sensible that perfection was unattainable in any plan; but being a fundamental and a perpetual error it ought by all means to be avoided. A vice in the representation, like an error in the first concoction, must be followed by disease, convulsions, and finally death itself. The



justice of the general principle of proportional representation has not, in argument at least, been yet contradicted. But it is said that a departure from it, so far as to give the states an equal vote in one branch of the legislature, is essential to their preservation. He had considered this position maturely, but could not see its application. That the states ought to be preserved, he admitted. But does it follow that an equality of votes is necessary for the purpose? Is there any reason to suppose that, if their preservation should depend more on the large than on the small states, the security of the states against the general government would be diminished? Are the large states less attached to their existence, more likely to commit suicide, than the small? An equal vote, then, is not necessary, as far as he can conceive, and is liable, among other objections, to this insuperable one—the great fault of the existing Confederacy is its inactivity. It has never been a complaint against Congress that they governed over much. The complaint has been that they have governed too little. To remedy this defect we were sent here. Shall we effect the cure by establishing an equality of votes, as is proposed? No: this very equality carries us directly to Congress—to the system which is our duty to rectify. The small states cannot indeed act, by virtue of this equality, but they may control the government, as they have done in Congress. This very measure is here prosecuted by a minority of the people of America. Is then, the object of the Convention likely to be accomplished in this way? Will not our constituents say, we sent you to form an efficient government and you have given us one, more complex, indeed, but having all the weakness of the former government. He was anxious for uniting all the states under one government. He knew there were some respectable men who preferred three confederacies, united by offensive and defensive alliances. Many things may be plausibly said, some things may be justly said, in favor of such a project. He could not, however, concur in it himself; but he thought nothing so pernicious as bad first principles.

Ellsworth: Asked two questions—one of Mr. Wilson, whether he had ever seen a good measure fail in Congress for want of a

majority of states in its favor? He had himself never known such an instance. The other of Mr. Madison, whether a negative lodged with the majority of the states, even the smallest, could be more dangerous than the qualified negative proposed to be lodged in a single executive magistrate, who must be taken from some one state?

Sherman: Signified that his expectation was that the general legislature would in some cases act on the *federal principle* of requiring quotas. But he thought it ought to be empowered to carry their own plans into execution, if the states should fail to supply their respective quotas.

On the question for agreeing to C. Pinckney's motion, for allowing New Hampshire two, Massachusetts four, etc., it passed in the negative: Yeas 4 (Pennsylvania, Maryland, Virginia, South Carolina); nays 6 (Massachusetts, Connecticut, New Jersey, Delaware, North Carolina, Georgia).

On the question for agreeing to the whole report, as amended, and including the equality of votes in the second branch, it passed in the affirmative: Yeas 5 (Connecticut, New Jersey, Delaware, Maryland, North Carolina); nays 4 (Pennsylvania, Virginia, South Carolina, Georgia); divided 1 (Massachusetts). July 16

The whole thus passed is in the words following, viz.:

“Resolved, that in the original formation of the legislature of the United States, the first branch thereof shall consist of sixty-five members, of which number New Hampshire shall send 3; Massachusetts, 8; Rhode Island, 1; Connecticut, 5; New York, 6; New Jersey, 4; Pennsylvania, 8; Delaware, 1; Maryland, 6; Virginia, 10; North Carolina, 5; South Carolina, 5; Georgia, 3. But as the present situation of the states may probably alter in the number of their inhabitants, the legislature of the United States shall be authorized, from time to time, to apportion the number of representatives, and in case any of the states shall hereafter be divided, or enlarged by addition of territory, or any two or more states united, or any new states created within the limits of the United States, the legislature of the United States shall possess authority to regulate the number of representatives in any of the foregoing

cases, upon the principle of their number of inhabitants, according to the provisions hereafter mentioned: provided always that representation ought to be proportioned according to direct taxation. And in order to ascertain the alteration in the direct taxation, which may be required from time to time by the changes in the relative circumstances of the states—

“Resolved, that a census be taken within six years from the first meeting of the legislature of the United States, and once within the term of every ten years afterwards, of all the inhabitants of the United States, in the manner and according to the ratio recommended by Congress in their resolution of the eighteenth day of April, 1783; and that the legislature of the United States shall proportion the direct taxation accordingly.

“ . . .

“Resolved, that in the second branch of the legislature of the United States, each state shall have an equal vote.”

#### REACTION OF DELEGATES TO COMPROMISE

##### PROCEEDINGS FOLLOWING ADOPTION OF COMPROMISE

*July 16*     **Fundamentals in Convention.** Randolph: The vote of this morning (involving an equality of suffrage in the second branch) had embarrassed the business extremely. All the powers given in the report from the Committee of the Whole were founded on the supposition that a proportional representation was to prevail in both branches of the legislature. When he came here this morning, his purpose was to have offered some propositions that might, if possible, have united a great majority of votes, and particularly might provide against the danger suspected on the part of the smaller states, by enumerating the cases in which it might lie, and allowing an equality of votes in such cases. But finding from the preceding vote that they persist in demanding an equal vote in all cases; that they have succeeded in obtaining it; and that New York, if present, would probably be on the same side; he could but think we were unprepared to discuss this subject further. It will prob-

ably be in vain to come to any final decision, with a bare majority on either side. For these reasons he wished the Convention to adjourn, that the large states might consider the steps proper to be taken, in the present solemn crisis of the business; and that the small states might also deliberate on the means of conciliation.

Paterson: Thought with Mr. Randolph that it was high time for the Convention to adjourn; that the rule of secrecy ought to be rescinded; and that our constituents should be consulted. No conciliation could be admissible on the part of the smaller states on any other ground than that of an equality of votes in the second branch. If Mr. Randolph would reduce to form his motion for an adjournment sine die, he would second it with all his heart.

C. C. Pinckney: Wished to know of Mr. Randolph whether he meant an adjournment sine die, or only an adjournment for the day. If the former was meant, it differed much from his idea. He could not think of going to South Carolina and returning again to this place. Besides it was chimerical to suppose that the states, if consulted, would ever accord separately and beforehand.

Randolph: Had never entertained an idea of an adjournment sine die; and was sorry that his meaning had been so readily and strangely misinterpreted. He had in view merely an adjournment till tomorrow in order that some conciliatory experiment might if possible be devised; and that in case the smaller states should continue to hold back, the larger might then take such measures—he would not say what—as might be necessary.

Paterson: Seconded the adjournment till tomorrow, as an opportunity seemed to be wished by the larger states to deliberate further on conciliatory expedients.

On the question for adjourning till tomorrow, the states were equally divided: Yeas 5 (New Jersey, Pennsylvania, Maryland, Virginia, North Carolina); nays 5 (Massachusetts, Connecticut, Delaware, South Carolina, Georgia); so it was lost.

Broom: Thought it his duty to declare his opinion against an adjournment sine die, as had been urged by Mr. Paterson. Such a measure, he thought, would be fatal. Something must be done by the Convention, though it should be by a bare majority.

Gerry: Observed that Massachusetts was opposed to an adjournment because they saw no new ground of compromise. But as it seemed to be the opinion of so many states that a trial should be made, the state would now concur in the adjournment.

Rutledge: Could see no need of an adjournment because he could see no chance of a compromise. The little states were fixed. They had repeatedly and solemnly declared themselves to be so. All that the large states, then, had to do was to decide whether they would yield or not. For his part, he conceived that, although we could not do what we thought best in itself, we ought to do something. Had we not better keep the government up a little longer, hoping that another convention will supply our omissions, than abandon everything to hazard? Our constituents will be very little satisfied with us if we take the latter course.

Randolph and King: Renewed the motion to adjourn till tomorrow.

On the question: Yeas 7 (Massachusetts, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina); nays 2 (Connecticut, Delaware); divided 1 (Georgia).

(On the morning following, before the hour of the Convention, a number of the members from the larger states, by common agreement, met for the purpose of consulting on the proper steps to be taken in consequence of the vote in favor of an equal representation in the second branch, and the apparent inflexibility of the smaller states on that point. Several members from the latter states also attended. The time was wasted in vague conversation on the subject, without any specific proposition or agreement. It appeared, indeed, that the opinions of the members who disliked the equality of votes differed much as to the importance of that point; and as to the policy

of risking a failure of any general act of the Convention by inflexibly opposing it. Several of them—supposing that no good government could or would be built on that foundation; and that, as a division of the Convention into two opinions was unavoidable, it would be better that the side comprising the principal states and a majority of the people of America should propose a scheme of government to the states than that a scheme should be proposed on the other side—would have concurred in a firm opposition to the smaller states, and in a separate recommendation, if eventually necessary. Others seemed inclined to yield to the smaller states, and to concur in such an act, however imperfect and exceptionable, as might be agreed on by the Convention as a body, though decided by a bare majority of states and by a minority of the people of the United States. It is probable that the result of this consultation satisfied the smaller states, that they had nothing to apprehend from a union of the larger in any plan whatever against the equality of votes in the second branch.)

G. Morris: Moved to reconsider the whole resolution agreed to yesterday concerning the constitution of the two branches of the legislature. His object was to bring the House to a consideration, in the abstract, of the powers necessary to be vested in the general government. It had been said, Let us know how the government is to be modelled, and then we can determine what powers can be properly given to it. He thought the most eligible course was, first to determine on the necessary powers, and then so to modify the government as that it might be justly and properly enabled to administer them. He feared, if we proceeded to a consideration of the powers, whilst the vote of yesterday, including an equality of the states in the second branch, remained in force, a reference to it, either mental or expressed, would mix itself with the merits of every question concerning the powers. This motion was not seconded. (It was probably approved by several members who either despaired of success, or were apprehensive that the attempt would inflame the jealousies of the smaller states.)

*July 17*

## RECONSIDERATION OF FUNDAMENTALS

- July 23    **Fundamentals in Convention.** G. Morris and King: Moved that the representation in the second branch consist of \_\_\_\_\_ members from each state, who shall vote per capita.
- Ellsworth: Said he had always approved of voting in that mode.
- G. Morris: Moved to fill the blank with "three." He wished the Senate to be a pretty numerous body. If two members only should be allowed to each state, and a majority be made a quorum, the power would be lodged in fourteen members, which was too small a number for such a trust.
- Gorham: Preferred two to three members for the blank. A small number was most convenient for deciding on peace and war, etc., which he expected would be vested in the second branch. The number of states will also increase. Kentucky, Vermont, the Province of Maine and Franklin, will probably soon be added to the present number. He presumed also that some of the largest states would be divided. The strength of the general government will be not in the largeness but the smallness of the states.
- Mason: Thought *three* from each state, including new states, would make the second branch too numerous. Besides other objections, the additional expense ought always to form one, where it was not absolutely necessary.
- Williamson: If the number be too great, the distant states will not be on an equal footing with the nearer states. The latter can more easily send and support their ablest citizens. He approved of the voting per capita.
- On the question for filling the blank with "three": Yeas 1 (Pennsylvania); nays 8 (New Hampshire, Massachusetts, Connecticut, Delaware, Virginia, North Carolina, South Carolina, Georgia).
- On the question for filling it with "two": Agreed to, *nem. con.*
- L. Martin: Was opposed to voting per capita, as departing from the idea of the *states* being represented in the second branch.
- Carroll: Was not struck with any particular objection against

the mode; but he did not wish so hastily to make so material an innovation.

On the question on the whole motion, viz., "the second branch to consist of two members from each state, and to vote per capita": Yeas 9 (New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia); nays 1 (Maryland).

Carroll: Took occasion to observe that he considered the clause declaring that direct taxation on the states should be in proportion to representation, previous to the obtaining an actual census, as very objectionable; and that he reserved to himself the right of opposing it, if the report of the Committee of Detail should leave it in the plan. July 24

G. Morris: Hoped the committee would strike out the whole of the clause proportioning direct taxation to representation. He had only meant it as a bridge<sup>1</sup> to assist us over a certain gulf; having passed the gulf, the bridge may be removed. He thought the principle laid down with so much strictness liable to strong objections.

**Agreements Referred to Committee of Detail.** Resolved, that in the original formation of the legislature of the United States, the first branch thereof shall consist of sixty-five members; of which number July 26

|                                    |       |
|------------------------------------|-------|
| New Hampshire shall send . . . . . | three |
| Massachusetts . . . . .            | eight |
| Rhode Island . . . . .             | one   |
| Connecticut . . . . .              | five  |
| New York . . . . .                 | six   |
| New Jersey . . . . .               | four  |
| Pennsylvania . . . . .             | eight |
| Delaware . . . . .                 | one   |
| Maryland . . . . .                 | six   |
| Virginia . . . . .                 | ten   |

<sup>1</sup> The object was to lessen the eagerness, on one side, and the opposition, on the other, to the share of representation claimed by the southern states on account of the negroes.



North Carolina .....five  
 South Carolina .....five  
 Georgia .....three

But as the present situation of the states may probably alter in the number of their inhabitants, the legislature of the United States shall be authorized, from time to time, to apportion the number of representatives; and in case any of the states shall hereafter be divided, or enlarged by addition of territory, or any two or more states united, or any new states created within the limits of the United States, the legislature of the United States shall possess authority to regulate the number of representatives, in any of the foregoing cases, upon the principle of their number of inhabitants, according to the provisions hereafter mentioned, namely, provided always that representation ought to be proportioned to direct taxation. And in order to ascertain the alteration in the direct taxation, which may be required from time to time, by the changes in the relative circumstances of the states—Eighth resolution on fundamentals.

Resolved, that a census be taken within six years from the first meeting of the legislature of the United States, and once within the term of every ten years afterwards, of all the inhabitants of the United States, in the manner and according to the ratio recommended by Congress in their resolution of the eighteenth of April, 1783; and that the legislature of the United States shall proportion the direct taxation accordingly. Ninth resolution on fundamentals.

Resolved, that in the second branch of the legislature of the United States, each state shall have an equal vote. Eleventh resolution on fundamentals.

#### ELABORATION OF DETAILS

*Aug. 6* Details in Convention. The House of Representatives shall, at its first formation, and until the number of citizens and inhabitants shall be taken in the manner hereinafter described, consist of sixty-five members, of whom three shall be chosen

in New Hampshire, eight in Massachusetts, one in Rhode Island and Providence Plantations, five in Connecticut, six in New York, four in New Jersey, eight in Pennsylvania, one in Delaware, six in Maryland, ten in Virginia, five in North Carolina, five in South Carolina, and three in Georgia. Article IV, Section 3, Committee of Detail.

As the proportions of numbers in different states will alter from time to time; as some of the states may hereafter be divided; as others may be enlarged by addition of territory; as two or more states may be united; as new states will be erected within the limits of the United States, the legislature shall, in each of these cases, regulate the number of representatives by the number of inhabitants, according to the provisions hereinafter made, at the rate of one for every forty thousand. Article IV, Section 4, Committee of Detail.

The Senate of the United States shall be chosen by the legislatures of the several states. Each legislature shall choose two members. Vacancies may be supplied by the executive until the next meeting of the legislature. Each member shall have one vote. Article V, Section 1, Committee of Detail.

Article IV, Section 3, was taken up.

*Aug. 8*

C. C. Pinckney and C. Pinckney: Moved that the number of representatives allotted to South Carolina be "six."

On the question: Yeas 4 (Delaware, North Carolina, South Carolina, Georgia); nays 7 (New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Maryland, Virginia).

The third section of Article IV was then agreed to.

Article IV, Section 4, was then taken up.

Williamson: Moved to strike out "according to the provisions hereinafter made" and to insert the words "according to the rule hereafter to be provided for direct taxation." [See Article VII, Section 3, Report of Committee of Detail, *supra*.]

On the question for agreeing to Mr. Williamson's amendment:

Yeas 9 (New Hampshire, Massachusetts, Connecticut, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia); nays 2 (New Jersey, Delaware).

King: Wished to know what influence the vote just passed was

meant to have on the succeeding part of the report, concerning the admission of slaves into the rule of representation. He could not reconcile his mind to the article, if it was to prevent objections to the latter part. The admission of slaves was a most grating circumstance to his mind, and he believed would be so to a great part of the people of America. He had not made a strenuous opposition to it heretofore, because he had hoped that this concession would have produced a readiness, which had not been manifested, to strengthen the general government and to mark a full confidence in it. The report under consideration had, by the tenor of it, put an end to all those hopes. In two great points the hands of the legislature were absolutely tied. The importation of slaves could not be prohibited. Exports could not be taxed. Is this reasonable? What are the great objects of the general system? First, defense against foreign invasion; secondly, against internal sedition. Shall all the states, then, be bound to defend each, and shall each be at liberty to introduce a weakness which will render defense more difficult? Shall one part of the United States be bound to defend another part and that other part be at liberty not only to increase its own danger but to withhold the compensation for the burden? If slaves are to be imported, shall not the exports produced by their labor supply a revenue the better to enable the general government to defend their masters? There was so much inequality and unreasonableness in all this that the people of the northern states could never be reconciled to it. No candid man could undertake to justify it to them. He had hoped that some accommodation would have taken place on this subject; that at least a time would have been limited for the importation of slaves. He never could agree to let them be imported without limitation, and then be represented in the national legislature. Indeed, he could so little persuade himself of the rectitude of such a practice that he was not sure he could assent to it under any circumstances. At all events, either slaves should not be represented or exports should be taxable.

Sherman: Regarded the slave trade as iniquitous; but the point

of representation having been settled after much difficulty and deliberation, he did not think himself bound to make opposition, especially as the present article, as amended, did not preclude any arrangement whatever on that point in another place of the report.

Madison: Objected to one for every forty thousand inhabitants as a perpetual rule. The future increase of population, if the Union should be permanent, will render the number of representatives excessive.

Gorham: It is not to be supposed that the government will last so long as to produce this effect. Can it be supposed that this vast country, including the western territory, will, one hundred and fifty years hence, remain one nation?

Ellsworth: If the government should continue so long, alterations may be made in the Constitution in the manner proposed in a subsequent article.

Sherman and Madison: Moved to insert the words "not exceeding" before the words "one for every forty thousand," which was agreed to, *nem. con.*

G. Morris: Moved to insert "free" before the word "inhabitants." Much, he said, would depend on this point. He never would concur in upholding domestic slavery. It was a nefarious institution. It was the curse of heaven on the states where it prevailed. Compare the free regions of the middle states, where a rich and noble cultivation marks the prosperity and happiness of the people, with the misery and poverty which overspread the barren wastes of Virginia, Maryland, and the other states having slaves. Travel through the whole continent, and you behold the prospect continually varying with the appearance and disappearance of slavery. The moment you leave the eastern states and enter New York, the effects of the institution become visible. Passing through the Jerseys and entering Pennsylvania, every criterion of superior improvement witnesses the change. Proceed southwardly, and every step you take, through the great regions of slaves, presents a desert, increasing with the increasing proportion of these wretched beings. Upon what principle is it that the slaves shall

be computed in the representation? Are they men? Then make them citizens, and let them vote. Are they property? Why, then, is no other property included? The houses in this city (Philadelphia) are worth more than all the wretched slaves who cover the rice swamps of South Carolina. The admission of slaves into the representation, when fairly explained, comes to this, that the inhabitant of Georgia and South Carolina who goes to the coast of Africa, and, in defiance of the most sacred laws of humanity, tears away his fellow creatures from their dearest connections, and damns them to the most cruel bondage, shall have more votes in a government instituted for protection of the rights of mankind than the citizen of Pennsylvania or New Jersey, who views with a laudable horror so nefarious a practice. He would add that domestic slavery is the most prominent feature in the aristocratic countenance of the proposed Constitution. The vassalage of the poor has ever been the favorite offspring of aristocracy. And what is the proposed compensation to the northern states for a sacrifice of every principle of right, of every impulse of humanity? They are to bind themselves to march their militia for the defense of the southern states, for their defense against those very slaves of whom they complain. They must supply vessels and seamen, in case of foreign attack. The legislature will have indefinite power to tax them by excises, and duties on imports, both of which will fall heavier on them than on the southern inhabitants, for the Bohea tea used by a northern freeman will pay more tax than the whole consumption of the miserable slave, which consists of nothing more than his physical subsistence and the rag that covers his nakedness. On the other side, the southern states are not to be restrained from importing fresh supplies of wretched Africans, at once to increase the danger of attack and the difficulty of defense; nay, they are to be encouraged to it by an assurance of having their votes in the national government increased in proportion, and are, at the same time, to have their exports and their slaves exempt from all contributions for the public service. Let it not be said

that direct taxation is to be proportioned to representation. It is idle to suppose that the general government can stretch its hand directly into the pockets of the people, scattered over so vast a country. They can only do it through the medium of exports, imports and excises. For what, then, are all the sacrifices to be made? He would sooner submit himself to a tax for paying for all the negroes in the United States than saddle posterity with such a Constitution.

Dayton: Seconded the motion. He did it, he said, that his sentiments on the subject might appear, whatever might be the fate of the amendment.

Sherman: Did not regard the admission of the negroes into the ratio of representation as liable to such insuperable objections. It was the freemen of the southern states who were, in fact, to be represented according to the taxes paid by them, and the negroes are only included in the estimate of the taxes. This was his idea of the matter.

C. Pinckney: Considered the fisheries and the western frontier as more burdensome to the United States than the slaves. He thought this could be demonstrated, if the occasion were a proper one.

Wilson: Thought the motion premature. An agreement to the clause would be no bar to the object of it.

On the question on the motion to insert "free" before "inhabitants": Yeas 1 (New Jersey); nays 10 (New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia).

On the suggestion of Dickinson, the words "provided that each state shall have one representative at least," were added, *nem. con.*

Article IV, Section 4, as amended, was agreed to, *nem. con.*

Article V, Section 1, was then taken up.

Aug. 9

Randolph: Called for a division of the section so as to leave a distinct question on the last words, "each member shall have one vote." He wished this last sentence to be postponed until the reconsideration should have taken place on Article IV,

Section 5, concerning money bills. If that section should be reinstated, his plan would be to vary the representation in the Senate.

Strong: Concurred in Mr. Randolph's ideas on this point.

Read: Did not consider the section as to money bills of any advantage to the larger states, and had voted for striking it out as being viewed in the same light by the larger states. If it was considered by them as of any value, and as a condition of the equality of votes in the Senate, he had no objection to its being reinstated.

Wilson, Ellsworth, and Madison: Urged that it was of no advantage to the larger states, and that it might be a dangerous source of contention between the two houses. All the principal powers of the national legislature had some relation to money.

Franklin: Considered the two clauses, the originating of money bills and the equality of votes in the Senate, as essentially connected by the compromise which had been agreed to.

Mason: Said this was not the time for discussing this point. When the originating of money bills shall be reconsidered, he thought it could be demonstrated that it was of essential importance to restrain the right to the House of Representatives, the immediate choice of the people.

Williamson: The state of North Carolina had agreed to an equality in the Senate merely in consideration that money bills should be confined to the other house: and he was surprised to see the smaller states forsaking the condition on which they had received their equality.

On the question on the first section, down to the last sentence: Yeas 7 (New Hampshire, Connecticut, New Jersey, Delaware, Maryland, Virginia, Georgia); nays 3 (Massachusetts, Pennsylvania, North Carolina); divided 1 (South Carolina).

Randolph: Moved that the last sentence "each member shall have one vote" be postponed.

It was observed that this could not be necessary; as in case the sanction as to originating money bills should not be reinstated, and a revision of the Constitution should ensue, it would still be proper that the members should vote per capita. A post-

ponement of the preceding sentence, allowing to each state two members, would have been more proper.

Mason: Did not mean to propose a change of this mode of voting per capita, in any event. But as there might be other modes proposed, he saw no impropriety in postponing the sentence. Each state may have two members and yet may have unequal votes. He said that unless the exclusive right of originating money bills should be restored to the House of Representatives, he should—not from obstinacy, but duty and conscience—oppose throughout the equality of representation in the Senate.

G. Morris: Such declarations were, he supposed, addressed to the smaller states, in order to alarm them for their equality in the Senate, and induce them, against their judgments, to concur in restoring the section concerning money bills. He would declare in his turn that as he saw no prospect of amending the constitution of the Senate, and considered the section relating to money bills as intrinsically bad, he would adhere to the section establishing the equality, at all events.

Wilson: It seems to have been supposed by some that the section concerning money bills is desirable to the large states. The fact was that two of those states (Pennsylvania and Virginia) had uniformly voted against it without reference to any other part of the system.

Randolph: Urged, as Col. Mason had done, that the sentence under consideration was connected with that relating to money bills, and might possibly be affected by the result of the motion for reconsidering the latter. That the postponement was therefore not improper.

On the question for postponing “each member shall have one vote”: Yeas 2 (Virginia, North Carolina); nays 8 (Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, South Carolina, Georgia); divided 1 (New Hampshire).

The words were then agreed to as part of the section.

Dickinson: Moved to postpone Article VII, Section 3, in order to reconsider Article IV, Section 4, and to *limit* the number of

Aug. 21



representatives to be allowed to the large states. Unless this were done, the small states would be reduced to entire insignificance, and encouragement given to the importation of slaves.

Sherman: Would agree to such a reconsideration; but did not see the necessity of postponing the section before the House.

Dickinson: Withdrew his motion.

*Sept. 8* Williamson: Moved that previous to this work of the committee [the Committee on Style and Arrangement], the clause relating to the number of the House of Representatives should be reconsidered, for the purpose of increasing the number.

Madison: Seconded the motion.

Sherman: Opposed it. He thought the provision on that subject amply sufficient.

Hamilton: Expressed himself with great earnestness and anxiety in favor of the motion. He avowed himself a friend to a vigorous government, but would declare, at the same time, he held it essential that the popular branch of it should be on a broad foundation. He was seriously of opinion that the House of Representatives was on so narrow a scale as to be really dangerous and to warrant a jealousy in the people for their liberties. He remarked that the connection between the President and Senate would tend to perpetuate him, by corrupt influence. It was the more necessary on this account that a numerous representation in the other branch of the legislature should be established.

On the motion of Williamson to reconsider: Yeas 5 (Pennsylvania, Delaware, Maryland, Virginia, North Carolina); nays 6 (New Hampshire, Massachusetts, Connecticut, New Jersey, South Carolina, Georgia).

*Sept. 12* **Conclusions in Convention.** Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to servitude for a term of years, and excluding Indians not taxed, three-fifths

of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every forty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the state of New Hampshire shall be entitled to choose three; Massachusetts, eight; Rhode Island and Province Plantations, one; Connecticut, five; New York, six; New Jersey, four; Pennsylvania, eight; Delaware, one; Maryland, six; Virginia, ten; North Carolina, five; South Carolina, five; and Georgia, three. Article I, Section 2, paragraph 3. Report of Committee on Style and Arrangement.

The Senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof for six years; and each senator shall have one vote. Article I, Section 3, paragraph 1. Report of Committee on Style and Arrangement.

Article I, Section 2. On motion of Randolph, the word "servitude" was struck out, and "service" unanimously inserted, the former being thought to express the condition of slaves, and the latter the obligations of free persons.

Sept. 13

Dickinson and Wilson: Moved to strike out "and direct taxes" from Article I, Section 2, as improperly placed in a clause relating merely to the constitution of the House of Representatives.

G. Morris: The insertion here was in consequence of what had passed on this point, in order to exclude the appearance of counting the negroes in the *representation*. The including of them may now be referred to the object of direct taxes, and incidentally only to that of representation.

On the motion to strike out "and direct taxes" from this place: Yeas 3 (New Jersey, Delaware, Maryland); nays 8 (New Hampshire, Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia).

Williamson: Moved to reconsider, in order to increase the num-

Sept. 14

ber of representatives fixed for the first legislature. His purpose was to make an addition of one-half generally to the number allotted to the respective states; and to allow two to the smallest states.

On this motion: Yeas 5 (Pennsylvania, Delaware, Maryland, Virginia, North Carolina); nays 6 (New Hampshire, Massachusetts, Connecticut, New Jersey, South Carolina, Georgia).

Article I, Section 9: On motion of Mason, the words "or enumeration" were inserted after, as explanatory of "census": Connecticut and South Carolina only, no.<sup>2</sup>

*Sept. 15* Langdon: Some gentlemen have been very uneasy that no increase of the number of representatives has been admitted. It has in particular been thought that one more ought to be allowed to North Carolina. He was of opinion that an additional one was due both to that state and to Rhode Island; and moved to reconsider for that purpose.

Sherman: When the committee of eleven reported the appointments, five representatives were thought the proper share of North Carolina. Subsequent information, however, seemed to entitle that state to another.

On the motion to reconsider: Yeas 8 (New Hampshire, Connecticut, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia); nays 2 (Massachusetts, New Jersey); divided 1 (Pennsylvania).

Langdon: Moved to add one member to each of the representations of North Carolina and Rhode Island.

King: Was against any change whatever, as opening the door for delays. There had been no official proof that the numbers of North Carolina are greater than before estimated, and he never could sign the Constitution if Rhode Island is to be allowed two members, that is, one-fourth of the number allowed to Massachusetts, which will be known to be unjust.

C. Pinckney: Urged the propriety of increasing the number of representatives allowed to North Carolina.

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<sup>2</sup> [See Chapter 10, "Periodical Re-allotments of Representatives," for agreement on periodical census.]

Bedford: Contended for an increase in favor of Rhode Island, and of Delaware also.

On the question for allowing two representatives to Rhode Island, it passed in the negative: Yeas 5 (New Hampshire, Delaware, Maryland, North Carolina, Georgia); nays 6 (Massachusetts, Connecticut, New Jersey, Pennsylvania, Virginia, South Carolina).

On the question for allowing six to North Carolina, it passed in the negative: Yeas 5 (Maryland, Virginia, North Carolina, South Carolina, Georgia); nays 6 (New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware).

Gorham: Said, if it was not too late, he could wish, for the purpose of lessening objections to the Constitution, that the clause, declaring that "the number of representatives shall not exceed one for every forty thousand," which had produced so much discussion, might be yet reconsidered, in order to strike out "forty thousand" and insert "thirty thousand." This would not, he remarked, establish that as an absolute rule, but only give Congress a greater latitude, which could not be thought unreasonable.

*Sept. 17*

King and Carroll: Seconded and supported the ideas of Mr. Gorham.

When the President rose, for the purpose of putting the question, he said that although his situation had hitherto restrained him from offering his sentiments on questions depending in the House, and, it might be thought, ought now to impose silence on him, yet he could not forbear expressing his wish that the alteration proposed might take place. It was much to be desired that the objections to the plan recommended might be made as few as possible. The smallness of the proportion of representatives had been considered by many members of the Convention an insufficient security for the rights and interests of the people. He acknowledged that it had always appeared to himself among the exceptionable parts of the plan; and late as the present moment was for admitting amendments, he thought this of so much consequence that it would give him much satisfaction to see it adopted.

No opposition was made to the proposition of Gorham, and it was agreed to unanimously.

On this day the provision was finally worded as follows: Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the state of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three. Article I, Section 2, paragraph 3.

Also included in the completed Constitution was the following: The Senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote. Article I, Section 3, paragraph 1.

#### IMMUNITIES OF REPRESENTATIVES

*Aug. 6*     **Details in Convention.** Freedom of speech and debate in the legislature shall not be impeached or questioned in any court or place out of the legislature; and the members of each house shall, in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at Congress, and in going to and returning from it. Article VI, Section 5, Committee of Detail.

*Aug. 10*     This section was agreed to, *nem. con.*

C. Pinckney: Moved a clause declaring that each house should be judge of the privileges of its own members. *Sept. 4*

G. Morris: Seconded the motion.

Randolph and Madison: Expressed doubts as to the propriety of giving such a power, and wished for a postponement.

G. Morris: Thought it so plain a case that no postponement could be necessary.

Wilson: Thought the power involved, and the express insertion of it, needless. It might beget doubts as to the power of other public bodies, as courts, etc. Every court is the judge of its own privileges.

Madison: Distinguished between the power of judging of privileges previously and duly established, and the effect of the motion, which would give a discretion to each house as to the extent of its own privileges. He suggested that it would be better to make provision for ascertaining by *law* the privileges of each house, than to allow each house to decide for itself. He suggested also the necessity of considering what privileges ought to be allowed to the executive.

**Conclusions in Convention.** The senators and representatives . . . shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house they shall not be questioned in any other place. Article I, Section 6, paragraph 1. Report of Committee on Style and Arrangement. *Sept. 12*

The provision recommended by the Committee on Style and Arrangement was included in the completed Constitution approved on this date. *Sept. 17*

#### SURVEY OF PROCEEDINGS ON LEGISLATIVE ORGANS OF THE FEDERAL GOVERNMENT

[Insertion by Compiler]

**Bifurcation of the Federal Legislature.** One hundred and eighty years of political growth in the oldest of the original

states (Virginia) preceded the drafting of the federal Constitution. Even in the youngest state (Georgia), fifty-four years elapsed before the problem of a more perfect Union came before the Philadelphia Convention. The other eleven states had developed their governmental systems in periods ranging from one hundred and fifty-seven years (Massachusetts) to one hundred and six years (Pennsylvania). During these fruitful years of political development from English origins, seventeenth and eighteenth century conditions supplemented geographic isolation to make the growth of political institutions both detached and provincial. The people of each colony and each state acquired a deep distrust of centralized power, and a corresponding reliance on colonial and state governments for the satisfaction of public needs.

This background explains the preference of our forebears for the confederacy as the type of union best suited to American conditions and least likely to usurp powers belonging to the states. From the New England Confederation to the creation of our present federal Union, they used confederacies, *de facto* and *de jure*, for the management of inter-colonial or interstate affairs. Inevitably, such unions were organized simply and possessed strictly circumscribed powers that operated as a rule on their constituent political units. It was such a union as this, drafted by a congress of states and approved by state legislatures, that carried us through our War for Independence and governed the country during the critical period following it, with results familiar to readers of American history. When the Philadelphia Convention assembled, the first question in every man's mind was, "Shall the confederate (miscalled then the 'federal') type of union be retained?" or "Shall we create a government supreme in the national sphere?" The Virginia plan was the answer of forward-looking men who had learned from the defects of the Articles of Confederation that a national government ought to be established consisting, as they put it, of "a supreme legislative, executive and judiciary."

Readers of proceedings printed in Chapter 5 must have been impressed by the statement of Mason in his discussion of the

proposed legislature of two branches. In vigorous language he called attention to three facts: (1) that the people for whom they were drafting a Constitution were attached to the republican form of government; (2) that they preferred the bicameral legislature; (3) that they were unwilling to give adequate legislative powers for national purposes to a unicameral body. Implications from these truths are that a republican government of the federal type needs a legislature of two branches, one of which, in addition to its participation in law enactments, should be entrusted with the performance of special functions (see Chapter 13), and that the legislature in one of its branches should represent the political entities composing the federation. The bicameral legislature came to America from English models originated in the Middle Ages, and reproduced in every colony except two. Finally, distrust of centralized authority would have operated against the delegation of adequate power to a single-chambered legislature. Because the best contributions to human well-being are the fruit of the past, the founders were wise to make their legislature bicameral.

**The House of Representatives.** Both English and American political experience, the product of evolutionary testing processes having their roots in a stabilizing past, pointed the way to solutions of structural problems arising from the bifurcation of the federal legislature. That experience made the establishment of the House of Representatives imperative as an organ for voicing the legislative needs of the people as a whole. As Pater-son inconsistently put it, the impossibility of referring questions of policy to all of the people for decision makes it necessary to create an agency in which they are proportionally represented to act for them. The method of electing these representatives agreed to in Convention seems the best possible adaptation of previous practices.

We find in the suggestion of Sherman that the executive should be the creature of the legislature, the essence of a parliamentary system, and in the propositions of the two Pinckneys that the state legislature should elect representatives either directly or indirectly, a survival of the notion that the state rather



than the people should choose national legislators. Even Madison commends what he calls a sifting process, but urges strongly the popular election of members of the House. The principle that political agencies of the national government should be elected by the people for whom they act, urged most convincingly by Wilson at Philadelphia, had to wait 126 years for final incorporation into the Constitution. The only feature of the House that seems out of keeping with our fully developed presidential system of popular government is the short term of members. One hundred and fifty years of operation is long enough to justify the assertion that the political agencies closest to the people—the President and members of the House—should be elected by them for the same term, four years.

**The Senate.** Congenital atrophy seems to be the fate of second chambers in national governments of the parliamentary type. Witness Great Britain and Canada. Even in the French Republic, with a senate highly praised for its dignity and stability, the parliamentary system lacks smoothness and unity in operation, largely because ultimate control of ministers is divided between the two branches of the legislature. Hence reformers urge the concentration of that control in the branch directly elected by the people, and a method of appealing to the voters by dissolution of parliament that will secure a popular referendum on differences between the legislature and the ministry. On the other hand, in governments of the presidential type second chambers are needed to provide an adequate system of checks and balances, as well as to secure ample consideration of legislative questions. Their first chambers have grown so large and so cumbersome with the inevitable increase of population that they have ceased to function as deliberative bodies.

The proponents of the Virginia plan, foreseeing some if not all of these advantages, made the second branch of the legislative structure co-ordinate with the first. Their insistence on a membership proportionately determined had to be abandoned; their crude method of election gave way to the much vaunted but hardly less objectionable sifting process of election by state

legislatures. But time, the inexorable corrector of political mistakes, as we have noticed, has made the popular election of national legislators a fundamental principle of our constitutional system.

Readers of proceedings reproduced in Chapter 7 must have noticed the admiration expressed by speakers for the English House of Lords. No delegate believed that it should be reproduced in this country, but there was widespread support of the idea that the new federal government they were creating should have an organ that would duplicate the services of that historic body at its best by offering careers, attracting leaders, and securing independence of transient popular passions, especially in the legislative field. The makers of the Constitution realized these objectives as fully as the limitations of popular government permit by following models found in English history, and by adjusting the governor's council of colonial times to the needs of an independent nation.

The term of senators agreed upon in Convention, unlike the term of representatives, has stood the test of time. A shorter one would have destroyed their legislative independence; a longer one would have weakened their responsiveness to constituents. Moreover, a rotation of terms such as the Constitution provides is an effective method of making one branch of the legislature a continuous body, with all of the advantages that length of service and *esprit de corps* confer. Vacancies, on principle, should be filled by the people for whom senators act, but that solution of the problem was not incorporated in the Constitution until 1913.

It was generally conceded that our federal system made qualifications for the second branch necessary. Citizenship, age, and inhabitancy of the state were wisely approved as essential elements of constitutional requirements on this subject. On the whole, the provisions of the supreme law embodying these elements have worked satisfactorily.

A presiding officer of the Senate not elected by that body, but serving *ex officio* because he was created primarily for another

purpose, was not a new feature of government in the organization of second branches. The English House of Lords is presided over by a non-member, not elected by the lords; and colonial and early state governments frequently had deputy or lieutenant governors who presided *ex officio* over the sessions of their second chambers.

**Representation in the Federal Legislature.** The most acute differences that developed in the Philadelphia Convention arose from the attitude of delegates towards the legislature of the new Union. Those who favored a national government with independent powers supported a legislature of two branches with proportional representation in each. Those who advocated a continuance of the government under the Articles of Confederation, with enlarged powers, urged a unicameral legislature with equal representation of the states therein; or, failing in that, they insisted on the equal representation of states in the second branch of a bicameral legislature. The unchangeable support by each group, with almost equal voting power, of the proposition to insert its plan in the new Constitution brought into existence a more moderate combination of delegates who favored a compromise, and whose sound mediation compelled standpatters to accept proportional representation in the first branch and the equal representation of states in the second. This so-called Connecticut Compromise was really an agreement that made a more perfect union possible, for without it the centrifugal forces in the Convention would have caused the secession of several states.

Other problems connected with the basic one, like the counting of slaves in the allotment of representatives, the representation of property, and the representation of new states, were solved practically, if not wisely. In the case of new states, equity compelled their admission without discrimination as members of the Union. We cannot help noting how the far-sighted statesmen at Philadelphia paved the way for a relatively recent decision of the Supreme Court laying down the doctrine that states are equal under the Constitution. Allotment of representatives, originally and periodically, presented a question that the Con-

vention considered thoroughly, resulting in the addition of parts to the completed Constitution that have strengthened its effectiveness as the supreme law of the land.

**Immunities of Representatives.** Freedom from arrest, except for serious crimes, and freedom of speech are essential privileges of representatives if they are to function unrestrained as agents of constituents whose participation in government compelled the development of the representative system. The records show that freedom from arrest dates back to the Anglo-Saxon period of English history. Freedom of speech, however, unchallenged in the House of Lords from the beginning, became a privilege of the House of Commons after repeated violation, the last of which was the prosecution of Sir John Eliot by Charles I. Both privileges were finally confirmed in the famous English Bill of Rights (1689). In American political history these immunities were granted by colonial laws and charters, and by provisions of early state constitutions. The Articles of Confederation suggested the phraseology for the report of the Committee of Detail on this subject. Thus, historic developments dating back to a remote past gave us our invaluable freedom of legislation by securing these immunities to representatives.



PART THREE

OBLIGATIONS, PREROGATIVES, AND POWERS  
OF CONGRESS

INTRODUCTION

Sound principles of sequence that should determine the arrangement of proceedings devoted to the federal legislature required that deliberations on structural features should be followed by those dealing with the functions of that organ. Accordingly, the compiler has reproduced in Chapter 12, headed "Obligations of Congress," proceedings taken from Madison's Notes showing how the Convention developed provision for the compensation of federal legislators, for an annual meeting of Congress, for a quorum necessary to enact laws, for keeping a journal of proceedings, and for adjournments. Relationship justifies placing these in the same chapter. Again, the Convention endowed Congress with certain powers, in the exercise of which it is independent and unchecked. The development of these is shown by proceedings reproduced in Chapter 13, headed "Prerogatives of Federal Legislative Branches." Finally, the powers which Congress may exercise under the Constitution are classified and sketched in Chapter 14 so as to show how each was developed, and what objectives it points to.



CHAPTER 12  
OBLIGATIONS OF CONGRESS

COMPENSATION OF FEDERAL LEGISLATORS

**Preliminaries in Committee of the Whole.** Resolved, that the members of the first branch of the national legislature ought . . . to receive liberal stipends by which they may be compensated for the devotion of their time to the public service; . . . *May 29*

Resolved, that the members of the second branch of the national legislature ought . . . to receive liberal stipends, by which they may be compensated for the devotion of their time to the public service; . . . Propositions in Virginia Plan.

The words "liberal compensation for members" being considered: *June 12*

**Madison:** Moved to insert the words "and fixed." He observed that it would be improper to leave the members of the national legislature to be provided for by the state legislatures because it would create an improper dependence, and to leave them to regulate their own wages was an indecent thing, and might in time prove a dangerous one. He thought wheat, or some other article of which the average price, throughout a reasonable period preceding, might be settled in some convenient mode, would form a proper standard.

**Mason:** Seconded the motion; adding that it would be improper, for other reasons, to leave the wages to be regulated by the states—first, the different states would make different provi-



sion for their representatives, and an inequality would be felt among them, whereas he thought they ought to be in all respects equal; secondly, the parsimony of the states might reduce the provision so low that, as had already happened in choosing delegates to Congress, the question would be not who were most fit to be chosen, but who were most willing to serve.

On the question for inserting the words "and fixed": Yeas 8 (New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Georgia); nays 3 (Massachusetts, Connecticut, South Carolina).

Franklin: Said he approved of the amendment just made for rendering the salaries as fixed as possible; but disliked the word "liberal." He would prefer the word "moderate" if it was necessary to substitute any other. He remarked the tendency of abuses, in every case, to grow of themselves when once begun; and related very pleasantly the progression in ecclesiastical benefices, from the first departure from the gratuitous provision for the apostles to the establishment of the papal system. The word "liberal" was struck out, *nem. con.*

On the motion of Mr. Pierce that the wages should be paid out of the national treasury: Yeas 8 (Massachusetts, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Georgia); nays 3 (Connecticut, New York, South Carolina).

Question on the clause relating to term of service and compensation of the first branch: Yeas 8 (Massachusetts, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Georgia); nays 3 (Connecticut, New York, South Carolina).

Butler and Rutledge: Proposed that the members of the second branch should be entitled to no salary or compensation for their services. On the question: <sup>1</sup> Yeas 3 (Connecticut, Delaware, South Carolina); nays 7 (New York, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, Georgia); divided 1 (Massachusetts).

It was then moved and agreed that the clauses respecting the

<sup>1</sup> It is probable the votes here turned chiefly on the idea that if the salaries were not here provided for, the members would be paid by their respective states.

stipends and ineligibility of the second branch be the same as of the first branch, Connecticut disagreeing to the ineligibility.

**Fundamentals in Convention.** Resolved, that the members of the first branch of the national legislature ought . . . to receive fixed stipends by which they may be compensated for the devotion of their time to the public service to be paid out of the national treasury. . . . Third resolution, Committee of the Whole. *June 19*

Resolved, that the members of the second branch of the national legislature ought . . . to receive fixed stipends by which they may be compensated for the devotion of their time to the public service, to be paid out of the national treasury. . . . Fourth resolution, Committee of the Whole.

The clause in the third resolution "to receive fixed stipends to be paid out of the national treasury" being considered: *June 22*

Ellsworth: Moved to substitute payment by the states, out of their own treasuries: observing that the manners of different states were very different in the style of living, and in the profits accruing from the exercise of like talents. What would be deemed, therefore, a reasonable compensation in some states, in others would be very unpopular and might impede the system of which it made a part.

Williamson: Favored the idea. He reminded the House of the prospect of new states to the westward. They would be too poor—would pay little into the common treasury—and would have a different interest from the old states. He did not think, therefore, that the latter ought to pay the expense of men that would be employed in thwarting their measures and interests.

Gorham: Wished not to refer the matter to the state legislatures, who were always paring down salaries in such a manner as to keep out of office men most capable of executing the functions of them. He thought, also, it would be wrong to fix the compensation by the Constitution, because we could not venture to make it as liberal as it ought to be, without exciting

an enmity against the whole plan. Let the national legislature provide for their own wages from time to time, as the state legislatures do. He had not seen this part of their power abused, nor did he apprehend an abuse of it.

Randolph: Said he feared we were going too far in consulting popular prejudices. Whatever respect might be due to them in lesser matters, or in cases where they formed the permanent character of the people, he thought it neither incumbent on nor honorable for the Convention to sacrifice right and justice to that consideration. If the states were to pay the members of the national legislature, a dependence would be created that would vitiate the whole system. The whole nation has an interest in the attendance and services of the members. The national treasury therefore is the proper fund for supporting them.

King: Urged the danger of creating a dependence on the states by leaving to them the payment of the members of the national legislature. He supposed it would be best to be explicit as to the compensation to be allowed. A reserve on that point, or a reference to the national legislature of the quantum, would excite greater opposition than any sum that would be actually necessary or proper.

Sherman: Contended for referring both the quantum and the payment of it to the state legislatures.

Wilson: Was against *fixing* the compensation, as circumstances would change and call for a change of the amount. He thought it of great moment that the members of the national government should be left as independent as possible of the state governments in all respects.

Madison: Concurred in the necessity of preserving the compensations for the national government independent of the state governments; but at the same time approved of *fixing* them by the Constitution, which might be done by taking a standard which would not vary with circumstances. He disliked particularly the policy, suggested by Mr. Williamson, of leaving the members from the poor states beyond the mountains to the precarious and parsimonious support of their constitu-

ents. If the western states hereafter arising should be admitted into the Union, they ought to be considered as equals and as brethren. If their representatives were to be associated in the common councils, it was of common concern that such provisions should be made as would invite the most capable and respectable characters into the service.

Hamilton: Apprehended inconvenience from *fixing* the wages. He was strenuous against making the national council dependent on the legislative rewards of the states. Those who pay are the masters of those who are paid. Payment by the states would be unequal, as the distant states would have to pay for the same term of attendance and more days in traveling to and from the seat of government. He expatiated emphatically on the difference between the feelings and views of the *people* and the *governments* of the states, arising from the personal interest and official inducements which must render the latter unfriendly to the general government.

Wilson: Moved that the salaries of the first branch "be ascertained by the national legislature and be paid out of the national treasury."

Madison: Thought the members of the legislature too much interested to ascertain their own compensation. It would be indecent to put their hands into the public purse for the sake of their own pockets.

On this question, "Shall the salaries of the first branch be ascertained by the national legislature?": Yeas 2 (New Jersey, Pennsylvania); nays 7 (Massachusetts, Connecticut, Delaware, Maryland, Virginia, North Carolina, South Carolina); divided 2 (New York, Georgia).

On the question for striking out "national treasury" as moved by Ellsworth:

Hamilton: Renewed his opposition to it. He pressed the distinction between the state governments and the people. The former would be the rivals of the general government. The state legislatures ought not, therefore, to be the paymasters of the latter.

Ellsworth: If we are jealous of the state governments, they will

be so of us. If on going home I tell them, we gave the general government such powers because we could not trust you, will they adopt it? And without their approbation it is a nullity. On the question: Yeas 4 (Massachusetts,<sup>2</sup> Connecticut, North Carolina, South Carolina); nays 5 (New Jersey, Pennsylvania, Delaware, Maryland, Virginia); divided 2 (New York, Georgia).

On a question for substituting "adequate compensation" in place of "fixed stipends," it was agreed to, *nem. con.*, the friends of the latter being willing that the practicability of *fixing* the compensation should be considered hereafter in forming the details.

Butler: Moved that a question be taken on both points jointly, to wit, "adequate compensation to be paid out of the national treasury." It was objected to as out of order, the parts having been separately decided on. The President referred the question of order to the House, and it was determined to be in order: Yeas 6 (Connecticut, New Jersey, Delaware, Maryland, North Carolina, South Carolina); nays 4 (New York, Pennsylvania, Virginia, Georgia); divided 1 (Massachusetts). The question on the sentence was then postponed by South Carolina, in right of the state.

*June 23* On the question yesterday postponed by South Carolina for agreeing to the whole sentence, "for allowing an adequate compensation, to be paid out of the *treasury of the United States*": Yeas 5 (Massachusetts, New Jersey, Pennsylvania, Maryland, Virginia); nays 5 (Connecticut, New York, Delaware, North Carolina, South Carolina); divided 1 (Georgia). So the question was lost, and the sentence not inserted.

*June 26* The clause of the fourth resolution, "to receive fixed stipends by which they may be compensated for their services," being considered:

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<sup>2</sup> It appeared that Massachusetts concurred, not because they thought the state treasury ought to be substituted but because they thought nothing should be said on the subject, in which case it would silently devolve on the national treasury to support the national legislature.

C. C. Pinckney: Proposed that no salary should be allowed. As this (the senatorial) branch was meant to represent the wealth of the country, it ought to be composed of persons of wealth; and if no allowance was to be made, the wealthy alone would undertake the service. He moved to strike out the clause.

Franklin: Seconded the motion. He wished the Convention to stand fair with the people. There were in it a number of young men who would probably be of the Senate. If lucrative appointments should be recommended, we might be chargeable with having carved out places for ourselves.

On the question: Yeas 5 (Massachusetts, Connecticut,<sup>3</sup> Pennsylvania, Maryland, South Carolina); nays 6 (New York, New Jersey, Delaware, Virginia, North Carolina, Georgia).

Williamson: Moved to change the expression into these words, to wit, "to receive a compensation for the devotion of their time to the public service." The motion was seconded by Ellsworth, and agreed to by all the states except South Carolina. It seemed to be meant only to get rid of the word "fixed," and leave greater room for modifying the provision on this point.

Ellsworth: Moved to strike out "to be paid out of the national treasury" and insert "to be paid by their respective states." If the Senate was meant to strengthen the government, it ought to have the confidence of the states. The states will have an interest in keeping up a representation, and will make such provision for supporting the members as will ensure their attendance.

Madison: Considered this as a departure from a fundamental principle, and subverting the end intended by allowing the Senate a duration of six years. They would, if this motion should be agreed to, hold their places during pleasure; during the pleasure of the state legislatures. One great end of the institution was that, being a firm, wise and impartial body, it might not only give stability to the general government, in its operations on individuals, but hold an even balance among different states. The motion would make the Senate, like Con-

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<sup>3</sup> Quere. Whether Connecticut should not be no, and Delaware aye. J. M.

gress, the mere agents and advocates of state interests and views, instead of being the impartial umpires and guardians of justice and the general good. Congress had lately, by the establishment of a board with full powers to decide on the mutual claims between the United States and the individual states, fairly acknowledged themselves to be unfit for discharging this part of the business referred to them by the Confederation.

Dayton: Considered the payment of the Senate by the states as fatal to their independence. He was decided for paying them out of the national treasury.

On the question of payment of the Senate to be left to the states, as moved by Ellsworth, it passed in the negative: Yeas 5 (Connecticut, New York, New Jersey, South Carolina, Georgia); nays 6 (Massachusetts, Pennsylvania, Delaware, Maryland, Virginia, North Carolina).

Mason: He did not rise to make any motion, but to hint an idea which seemed to be proper for consideration. One important object in constituting the Senate was to secure the rights of property. To give them weight and firmness for this purpose, a considerable duration in office was thought necessary. But a longer term than six years would be of no avail in this respect if needy persons should be appointed. He suggested, therefore, the propriety of annexing to the office a qualification of property. He thought this would be very practicable; as the rules of taxation would supply a scale for measuring the degree of wealth possessed by every man.

A question was then taken whether the words "to be paid out of the national treasury" should stand: Yeas 5 (Massachusetts, Pennsylvania, Delaware, Maryland, Virginia); nays 6 (Connecticut, New York, New Jersey, North Carolina, South Carolina, Georgia).

*July 26* **Agreements Referred to Committee of Detail.** Resolved, that the members of the first branch of the legislature ought . . . to be paid out of the public treasury; to receive an adequate compensation for their services; . . . Third resolution on fundamentals.

Resolved, that the members of the second branch of the legislature of the United States ought . . . to receive a compensation for the devotion of their time to the public service; . . . Fourth resolution on fundamentals.

**Details in Convention.** The members of each house shall receive a compensation for their services, to be ascertained and paid by the state in which they shall be chosen. Article VI, Section 10, Committee of Detail. Aug. 6

“That members be paid by their respective states” was then taken up: Aug. 14

Ellsworth: Said that in reflecting on this subject, he had been satisfied that too much dependence on the states would be produced by this mode of payment. He moved to strike it out and insert “that they should be paid out of the treasury of the United States an allowance not exceeding —— dollars per day, or the present value thereof.”

G. Morris: Remarked that if the members were to be paid by the states, it would throw an unequal burden on the distant states, which would be unjust, as the legislature was to be a national assembly. He moved that the payment be out of the national treasury; leaving the quantum to the discretion of the national legislature. There could be no reason to fear that they would overpay themselves.

Butler: Contended for payment by the states; particularly in the case of the Senate, who will be so long out of their respective states that they will lose sight of their constituents unless dependent on them for their support.

Langdon: Was against payment by the states. There would be some difficulty in fixing the sum, but it would be unjust to oblige the distant states to bear the expense of their members in traveling to and from the seat of government.

Madison: If the House of Representatives is to be chosen *biennially*, and the Senate to be *constantly* dependent on the legislatures, which are chosen *annually*, he could not see any chance for that stability in the general government the want of which was a principal evil in the state governments. His



fear was that the organization of the government supposing the Senate to be really independent for six years would not effect our purpose. It was nothing more than a combination of the peculiarities of two of the state governments, which separately had been found insufficient. The Senate was formed on the model of that of Maryland. The revisionary check on that of New York. What the effect of a union of these provisions might be could not be foreseen. The enlargement of the sphere of the government was indeed a circumstance which he thought would be favorable, as he had on several occasions undertaken to show. He was, however, for fixing at least two extremes not to be exceeded by the national legislature in the payment of themselves.

Gerry: There are difficulties on both sides. The observation of Mr. Butler has weight in it. On the other side, the state legislatures may turn out the senators by reducing their salaries. Such things have been practiced.

Mason: It has not yet been noticed that the clause as it now stands makes the House of Representatives also dependent on the state legislatures: so that both houses will be made the instruments of the politics of the states, whatever they may be.

Broom: Could see no danger in trusting the general legislature with the payment of themselves. The state legislatures had this power, and no complaint had been made of it.

Sherman: Was not afraid that the legislature would make their own wages too high, but too low; so that men ever so fit could not serve unless they were at the same time rich. He thought the best plan would be to fix a moderate allowance to be paid out of the national treasury and let the states make such additions as they might judge fit. He moved that five dollars per day be the sum, any further emoluments to be added by the states.

Carroll: Had been much surprised at seeing this clause in the report. The dependence of both houses on the state legislature is complete, especially as the members of the former are eligible to state offices. The states can now say: If you do not comply with our wishes, we will starve you; if you do, we will

reward you. The new government in this form was nothing more than a second edition of Congress, in two volumes instead of one, and perhaps with very few amendments.

Dickinson: Took it for granted that all were convinced of the necessity of making the general government independent of the prejudices, passions, and improper views of the state legislatures. The contrary of this was effected by the section as it stands. On the other hand, there were objections against taking a permanent standard, as wheat, which had been suggested on a former occasion, as well as against leaving the matter to the pleasure of the national legislature. He proposed that an act should be passed, every twelve years, by the national legislature settling the quantum of their wages. If the general government should be left dependent on the state legislatures, it would be happy for us if we had never met in this room.

Ellsworth: Was not unwilling himself to trust the legislature with authority to regulate their own wages, but well knew that an unlimited discretion for that purpose would produce strong, though perhaps not insuperable, objections. He thought changes in the value of money provided for by his motion in the words, "or the present value thereof."

L. Martin: As the Senate is to represent the states, the members of it ought to be paid by the states.

Carroll: The Senate was to represent and manage the affairs of the whole and not to be the advocates of state interests. They ought then not to be dependent on nor paid by the states.

On the question for paying the members of the legislature out of the national treasury: Yeas 9 (New Hampshire, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Georgia); nays 2 (Massachusetts, South Carolina).

Ellsworth: Moved that the pay be fixed at five dollars, or the present value thereof, per day, during their attendance, and for every thirty miles in traveling to and from Congress.

Strong: Preferred four dollars, leaving the states at liberty to make additions.

On the question for fixing the pay at five dollars: Yeas 2 (Con-

necticut, Virginia); nays 9 (New Hampshire, Massachusetts, New Jersey, Pennsylvania, Delaware, Maryland, North Carolina, South Carolina, Georgia).

Dickinson: Proposed that the wages of the members of both houses should be required to be the same.

Broom: Seconded him.

Gorham: This would be unreasonable. The Senate will be detained longer from home, will be obliged to remove their families, and in time of war perhaps to sit constantly. Their allowance should certainly be higher. The members of the senates in the states are allowed more than those of the other house.

Dickinson: Withdrew his motion.

It was moved and agreed to amend the section by adding, "to be ascertained by law."

The section (Article VI, Section 10), as amended, was then agreed to, *nem. con.*

*Sept. 12* **Conclusions in Convention.** The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. . . . Article I, Section 6. Report of Committee on Style and Arrangement.

*Sept. 17* The final draft of the Constitution, approved on this date, contained the provision recommended by the Committee on Style and Arrangement.

#### ANNUAL SESSIONS OF CONGRESS

*Aug. 6* **Details in Convention.** . . . The legislature shall meet on the first Monday in December in every year. Article III, last sentence, Committee of Detail.

*Aug. 7* Madison: Wished to know the reasons of the committee for fixing by the Constitution the time of meeting for the legislature; and suggested that it be required only that one meeting at least should be held every year, leaving the time to be fixed or varied by law.

G. Morris: Moved to strike out the sentence. It was improper to tie down the legislature to a particular time, or even to require a meeting every year. The public business might not require it.

C. Pinckney: Concurred with Mr. Madison.

Gorham. If the time be not fixed by the Constitution, disputes will arise in the legislature; and the states will be at a loss to adjust thereto the times of their elections. In the New England states, the annual time of meeting had been long fixed by their charters and constitutions, and no inconvenience had resulted. He thought it necessary that there should be one meeting at least every year, as a check on the executive department.

Ellsworth: Was against striking out the words. The legislature will not know till they are met whether the public interest required their meeting or not. He could see no impropriety in fixing the day, as the Convention could judge of it as well as the legislature.

Wilson: Thought on the whole it would be best to fix the day.

King: Could not think there would be a necessity for a meeting every year. A great vice in our system was that of legislating too much. The most numerous objects of legislation belong to the states. Those of the national legislature were but few. The chief of them were commerce and revenue. When these should be once settled, alterations would be rarely necessary and easily made.

Madison: Thought, if the time of meeting should be fixed by a law, it would be sufficiently fixed, and there would be no difficulty then, as had been suggested, on the part of the states in adjusting their elections to it. One consideration appeared to him to militate strongly against fixing a time by the Constitution. It might happen that the legislature might be called together by the public exigencies and finish their session but a short time before the annual period. In this case it would be extremely inconvenient to reassemble so quickly, and without the least necessity. He thought one annual meeting ought to be required; but did not wish to make two unavoidable.

Mason: Thought the objections against fixing the time insuperable; but that an annual meeting ought to be required as essential to the preservation of the Constitution. The extent of the country will supply business. And if it should not, the legislature, besides *legislative*, is to have *inquisitorial* powers, which cannot safely be long kept in a state of suspension.

Sherman: Was decided for fixing the time, as well as for frequent meetings of the legislative body. Disputes and difficulties will arise between the two Houses, and between both and the states, if the time be changeable. Frequent meetings of parliament were required at the revolution in England, as an essential safeguard of liberty. So also are annual meetings in most of the American charters and constitutions. There will be business enough to require it. The western country, and the great extent and varying state of our affairs in general, will supply objects.

Randolph: Was against fixing any day irrevocably; but as there was no provision made anywhere in the Constitution for regulating the periods of meeting, and some precise time must be fixed, until the legislature shall make provision, he could not agree to strike out the words altogether. Instead of which he moved to add the words following: "unless a different day shall be appointed by law."

Madison: Seconded the motion.

On the question: Yeas 8 (Massachusetts, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia); nays 2 (New Hampshire, Connecticut).

G. Morris: Moved to strike out "December" and insert "May." It might frequently happen that our measures ought to be influenced by those in Europe, which were generally planned during the winter, and of which intelligence would arrive in the spring.

Madison: Seconded the motion. He preferred May to December because the latter would require the traveling to and from the seat of government in the most inconvenient seasons of the year.

Wilson: The winter is the most convenient season for business.

Ellsworth: The summer will interfere too much with private business, that of almost all the probable members of the legislature being more or less connected with agriculture.

Randolph: The time is of no great moment now, as the legislature can vary it. On looking into the constitutions of the states, he found that the times of their elections, with which the elections of the national representatives would no doubt be made to coincide, would suit better with December than May, and it was advisable to render our innovations as little incommodious as possible.

On the question for "May" instead of "December": Yeas 2 (South Carolina, Georgia); nays 8 (New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, Virginia, North Carolina).

Read: Moved to insert after the word "Senate," the words "subject to the negative to be hereafter provided." His object was to give an absolute negative to the executive. He considered this as so essential to the Constitution, to the preservation of liberty, and to the public welfare, that his duty compelled him to make the motion.

G. Morris: Seconded him.

On the question: Yeas 1 (Delaware); nays 9 (New Hampshire, Massachusetts, Connecticut, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia).

Rutledge: Although it is agreed on all hands that an annual meeting of the legislature should be made necessary, yet that point seems not to be free from doubt as the clause stands. On this suggestion, "once at least in every year" was inserted, *nem. con.*

**Conclusions in Convention.** The Congress shall assemble at least once in every year; and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day. Article I, Section 4, paragraph 2. Report of Committee on Style and Arrangement.

*Sept. 12*

*Sept. 17* The provision for annual sessions of Congress recommended by the Committee on Style and Arrangement was finally approved on this day.

### QUORUM

*Aug. 6* **Details in Convention.** In each house a majority of the members shall constitute a quorum to do business; but a smaller number may adjourn from day to day. Article VI, Section 3, Committee of Detail.

*Aug. 10* Gorham: Contended that less than a majority in each house should be made a quorum; otherwise great delay might happen in business, and great inconvenience from the future increase of numbers.

Mercer: Was also for less than a majority. So great a number will put it in the power of a few, by seceding at a critical moment, to introduce convulsions, and endanger the government. Examples of secession have already happened in some of the states. He was for leaving it to the legislature to fix the quorum, as in Great Britain, where the requisite number is small and no inconvenience has been experienced.

Mason: This is a valuable and necessary part of the plan. In this extended country, embracing so great a diversity of interests, it would be dangerous to the distant parts to allow a small number of members of the two houses to make laws. The central states could always take care to be on the spot; and by meeting earlier than the distant ones, or wearying their patience, and outstaying them, could carry such measures as they pleased. He admitted that inconveniences might spring from the secession of a small number; but he had also known good produced by an apprehension of it. He had known a paper emission prevented by that cause in Virginia. He thought the Constitution, as now moulded, was founded on sound principles, and was disposed to put into it extensive powers. At the same time he wished to guard against abuses as much as possible. If the legislature should be able to reduce the number at all, it might reduce it as low as it pleased, and the United States might be governed by a junto. A majority

of the number which had been agreed on was so few that he feared it would be made an objection against the plan.

King: Admitted there might be some danger of giving an advantage to the central states, but was of opinion that the public inconvenience, on the other side, was more to be dreaded.

G. Morris: Moved to fix the quorum at thirty-three members in the House of Representatives, and fourteen in the Senate. This is a majority of the present number and will be a bar to the legislature. Fix the number low and they will generally attend, knowing that the advantage may be taken of their absence. The secession of a small number ought not to be suffered to break a quorum. Such events in the states may have been of little consequence. In the national councils they may be fatal. Besides other mischief, if a few can break up a quorum, they may seize a moment when a particular part of the continent may be in need of immediate aid, to extort, by threatening a secession, some unjust and selfish measure.

Mercer: Seconded the motion.

King: Said he had just prepared a motion which, instead of fixing the numbers proposed by Mr. Gouverneur Morris as quorums, made those the lowest numbers, leaving the legislature at liberty to increase them or not. He thought the future increase of members would render a majority of the whole extremely cumbersome.

Mercer: Agreed to substitute Mr. King's motion in place of Mr. Morris's.

Ellsworth: Was opposed to it. It would be a pleasing ground of confidence to the people that no law or burden could be imposed on them by a few men. He reminded the movers that the Constitution proposed to give such a discretion, with regard to the number of representatives, that a very inconvenient number was not to be apprehended. The inconvenience of secessions may be guarded against by giving to each house an authority to require the attendance of absent members.

Wilson: Concurred in the sentiments of Mr. Ellsworth.

Gerry: Seemed to think that some further precaution than merely fixing the quorum might be necessary. He observed



that as seventeen would be a majority of a quorum of thirty-three, and eight of fourteen, questions might by possibility be carried in the House of Representatives by two large states and in the Senate by the same states with the aid of two small ones. He proposed that the number for a quorum in the House of Representatives should not exceed fifty nor be less than thirty-three, leaving the intermediate discretion to the legislature.

King: As the quorum could not be altered, without the concurrence of the President, by less than two-thirds of each house, he thought there could be no danger in trusting the legislature.

Carroll: This would be no security against the continuance of the quorums at thirty-three, and fourteen, when they ought to be increased.

On the question of King's motion that not less than thirty-three in the House of Representatives, nor less than fourteen in the Senate, should constitute a quorum, which may be increased by a law, on additions to the members in either house: Yeas 2 (Massachusetts, Delaware); nays 9 (New Hampshire, Connecticut, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia).

Randolph and Madison: Moved to add to the end of Article VI, Section 3, "and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each house may provide." Agreed to by all except Pennsylvania, which was divided.

Article VI, Section 3, was agreed to as amended, *nem. con.*

Sept. 8 Madison: Moved that a quorum of the Senate consist of two-thirds of all the members.

G. Morris: This will put it in the power of one man to break up a quorum.

Madison: This may happen to any quorum.

On the question, it passed in the negative: Yeas 5 (Maryland, Virginia, North Carolina, South Carolina, Georgia); nays 6 (New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware).

**Conclusions in Convention.** . . . And a majority of each [House of Representatives and Senate] shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each house may provide. Article I, Section 5, paragraph 1. Report of Committee on Style and Arrangement. *Sept. 12*

The provision for a quorum became a part of the completed Constitution on this day. *Sept. 17*

## JOURNAL OF PROCEEDINGS

**Details in Convention.** The House of Representatives, and the Senate, when it shall be acting in a legislative capacity, shall keep a journal of their proceedings; and shall, from time to time, publish them; and the yeas and nays of the members of each house, on any question, shall, at the desire of one-fifth part of the members present, be entered on the journal. Article VI, Section 7, Committee of Detail. *Aug. 6*

G. Morris: Urged that if the yeas and nays were proper at all, any individual ought to be authorized to call for them; and moved an amendment to that effect. The small states may otherwise be under a disadvantage, and find it difficult to get a concurrence of one-fifth. *Aug. 10*

Randolph: Seconded the motion.

Sherman: Had rather strike out the yeas and nays altogether. They have never done any good, and have done much mischief. They are not proper, as the reasons governing the voter never appear along with them.

Ellsworth: Was of the same opinion.

Mason: Liked the section as it stood. It was a middle way between two extremes.

Gorham: Was opposed to the motion for allowing a single member to call the yeas and nays, and recited the abuses of it in Massachusetts; first, in stuffing the journals with them on frivolous occasions; secondly, in misleading the people, who never know the reasons determining the votes.

The motion for allowing a single member to call the yeas and nays was disagreed to, *nem. con.*

Carroll and Randolph: Moved to strike out the words "each house" and to insert the words "the House of Representatives" in Section 7, Article VI; and to add to the section the words "and any member of the Senate shall be at liberty to enter his dissent."

G. Morris and Wilson: Observed that if the minority were to have a right to enter their votes and reasons, the other side would have a right to complain if it were not extended to them: and to allow it to both would fill the journals, like the records of a court, with replications, rejoinders, etc.

On the question of Carroll's motion to allow a member to enter his dissent: Yeas 3 (Maryland, Virginia, South Carolina); nays 8 (New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, North Carolina, Georgia).

Gerry: Moved to strike out the words "when it shall be acting in its legislative capacity" in order to extend the provision to the Senate when exercising its peculiar authorities; and to insert "except such parts thereof as in their judgment require secrecy" after the words "publish them." (It was thought by others that provision should be made with respect to these, when that part came under consideration which proposed to vest those additional authorities in the Senate.)

On this question for striking out the words "when acting in its legislative capacity": Yeas 7 (Massachusetts, Delaware, Maryland, Virginia, North Carolina, Georgia, South Carolina); nays 3 (Connecticut, New Jersey, Pennsylvania); divided 1 (New Hampshire).

*Aug. 11* Madison and Rutledge: Moved "that each house shall keep a journal of its proceedings, and shall publish the same from time to time; except such part of the proceedings of the Senate, when acting not in its legislative capacity, as may be judged by that house to require secrecy."

Mercer: This implies that other powers than legislative will be given to the Senate, which he hoped would not be given.

Madison and Rutledge's motion was disagreed to by all the states except Virginia.

Gerry and Sherman: Moved to insert, after the words "publish them" the following, "except such as relate to treaties and military operations." Their object was to give each house a discretion in such cases.

On this question: Yeas 2 (Massachusetts, Connecticut); nays 8 (New Hampshire, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia).

Ellsworth: As the clause is objectionable in so many shapes, it may as well be struck out altogether. The legislature will not fail to publish their proceedings from time to time. The people will call for it if it should be improperly omitted.

Wilson: Thought the expunging of the clause would be very improper. The people have a right to know what their agents are doing or have done, and it should not be in the option of the legislature to conceal their proceedings. Besides, as this is a clause in the existing Confederation, the not retaining it would furnish the adversaries of the reform with a pretext by which weak and suspicious minds may be easily misled.

Mason: Thought it would give a just alarm to the people to make a conclave of their legislature.

Sherman: Thought the legislature might be trusted in this case, if in any.

On the question on the first part of the section, down to "*publish them,*" inclusive: It was agreed to, *nem. con.*

On the question on the words to follow, to wit, "except such parts thereof as may in their judgment require secrecy": Yeas 6 (Massachusetts, Connecticut, New Jersey, Virginia, North Carolina, Georgia); nays 4 (Pennsylvania, Delaware, Maryland, South Carolina); divided 1 (New Hampshire).

The remaining part, as to yeas and nays, was agreed to, *nem. con.*

**Conclusions in Convention.** Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house on any

Sept. 12

question shall, at the desire of one-fifth of those present, be entered on the journal. Article I, Section 5, paragraph 3. Report of Committee on Style and Arrangement.

*Sept. 14* Article I, Section 5. "Each house shall keep a journal of its proceedings, and from time to time, publish the same, excepting such parts as may in their judgment require secrecy."

Mason and Gerry: Moved to insert, after the word "parts" the words "of the proceedings of the Senate," so as to require publication of all the proceedings of the House of Representatives. It was intimated, on the other side, that cases might arise where secrecy might be necessary in both houses. Measures preparatory to a declaration of war, in which the House of Representatives was to concur, were instanced.

On the question: Yeas 3 (Pennsylvania, Maryland, North Carolina); nays 7 (New Hampshire, Massachusetts, Connecticut, New Jersey, Delaware, Virginia, Georgia); divided 1 (South Carolina).

*Sept. 17* The completed Constitution approved this day included the above provision unchanged.

#### ADJOURNMENT

*Aug. 6* Details in Convention. Neither house, without the consent of the other, shall adjourn for more than three days, nor to any other place than that at which the two houses are sitting. But this regulation shall not extend to the Senate when it shall exercise the powers mentioned in the ——— article. Article VI, Section 8, Committee of Detail.

*Aug. 11* King: Remarked that the section authorized the two houses to adjourn to a new place. He thought this inconvenient. The mutability of place had dishonored the federal government and would require as strong a cure as we could devise. He thought a law at least should be made necessary to a removal of the seat of government.

Madison: Viewed the subject in the same light, and joined with Mr. King in a motion requiring a law.

G. Morris: Proposed the additional alteration by inserting the words "during the session, etc."

Spaight: This will fix the seat of government at New York. The present Congress will convene them there in the first instance, and they will never be able to remove, especially if the President should be a northern man.

G. Morris: Such a distrust is inconsistent with all government.

Madison: Supposed that a central place for the seat of government was so just, and would be so much insisted on by the House of Representatives, that though a law should be made requisite for the purpose, it could and would be obtained. The necessity of a central residence of the government would be much greater under the new than old government. The members of the new government would be more numerous. They would be taken more from the interior parts of the states; they would not, like members of the present Congress, come so often from the distant states by water. As the powers and objects of the new government would be far greater than heretofore, more private individuals would have business calling them to the seat of it; and it was more necessary that the government should be in that position from which it could contemplate with the most equal eye, and sympathize most equally with every part of the nation. These considerations, he supposed, would extort a removal, even if a law were made necessary. But in order to quiet suspicions, both within and without doors, it might not be amiss to authorize the two houses, by a concurrent vote, to adjourn at their first meeting to the most proper place, and to require thereafter the sanction of a law to their removal.

The motion was accordingly moulded into the following form:

"The legislature shall at their first assembling determine on a place at which their future sessions shall be held; neither house shall afterwards, during the session of the House of Representatives, without the consent of the other, adjourn for more than three days; nor shall they adjourn to any other place than such as shall have been fixed by law."

Gerry: Thought it would be wrong to let the President check the will of the two houses on this subject at all.

Williamson: Supported the ideas of Mr. Spaight.

Carroll: Was actuated by the same apprehensions.

Mercer: It will serve no purpose to require the two houses at their first meeting to fix on a place. They will never agree.

After some further expressions from others denoting an apprehension that the seat of government might be continued at an improper place, if a law should be made necessary to a removal, and after the motion above stated, with another for recommitting the section, had been negatived, the section was left in the shape in which it was reported as to this point. The words "during the session of the legislature" were prefixed to the eighth section; and the last sentence "but this regulation shall not extend to the Senate when it shall exercise the powers mentioned in the ——— article," struck out. The eighth section, as amended, was then agreed to.

*Sept. 12*    **Conclusions in Convention.** Neither house, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting. Article I, Section 5, paragraph 4. Report of Committee on Style and Arrangement.

*Sept. 17*    The above committee recommendation became Article I, Section 5, paragraph 4, of the completed Constitution.

[Note: See President's power to adjourn the houses when they disagree about the time of adjournment. See Chapter 16.]

#### JUDICIAL EXPLICATIONS

United States v. Ballin, 144 U.S. 1 (1892)

Field v. Clark, 143 U.S. 649 (1892)

Harwood v. Wentworth, 162 U.S. 547 (1896)

CHAPTER 13  
PREROGATIVES OF FEDERAL  
LEGISLATIVE BRANCHES

PREROGATIVES OF THE HOUSE OF REPRESENTATIVES

REVENUE BILLS

Preliminaries in Committee of the Whole. Gerry: Moved to *June 13*  
restrain the senatorial branch from originating money bills.  
The other branch was more immediately the representatives  
of the people and it was a maxim that the people ought to  
hold the purse strings. If the Senate should be allowed to  
originate such bills, they would repeat the experiment till  
chance should furnish a set of representatives in the other  
branch who will fall into their snares.

Butler: Saw no reason for such a discrimination. We were al-  
ways following the British constitution, when the reason of  
it did not apply. There was no analogy between the House of  
Lords and the body proposed to be established. If the Senate  
should be degraded by any such discriminations, the best men  
would be apt to decline serving in it in favor of the other  
branch. And it will lead the latter into the practice of tacking  
other clauses to money bills.

Madison: Observed that the commentators on the British con-  
stitution had not yet agreed on the reason of the restriction on  
the House of Lords in money bills. Certain it was there could  
be no similar reason in the case before us. The Senate would  
be the representatives of the people, as well as the first branch.  
If they should have any dangerous influence over it, they



would easily prevail on some member of the latter to originate the bill they wished to be passed. As the Senate would be generally a more capable set of men, it would be wrong to disable them from any preparation of the business, especially of that which was most important and, in our republics, worse prepared than any other. The gentleman, in pursuance of his principle, ought to carry the restraint to the *amendment* as well as the originating of money bills; since an addition of a given sum would be equivalent to a distinct proposition of it. King: Differed from Mr. Gerry, and concurred in the objections to the proposition.

Read: Favored the proposition, but would not extend the restraint to the case of amendments.

C. Pinckney: Thinks the question premature. If the Senate should be formed on the *same* proportional representation as it stands at present, they should have equal power; otherwise, if a different principle should be introduced.

Sherman: As both branches must concur, there can be no danger, whichever way the Senate may be formed. We establish two branches in order to get more wisdom, which is particularly needed in the finance business. The Senate bear their share of the taxes and are also the representatives of the people. "What a man does by another, he does by himself," is a maxim. In Connecticut both branches can originate, in all cases, and it has been found safe and convenient. Whatever might have been the reason of the rule as to the House of Lords, it is clear that no good arises from it now even there.

C. C. Pinckney: This distinction prevails in South Carolina, and has been a source of pernicious disputes between the two branches. The constitution is now evaded by informal schedules of amendments, handed from the senate to the other house.

Williamson: Wishes for a question, chiefly to prevent rediscussion. The restriction will have one advantage; it will oblige some member in the lower branch to move, and people can then mark him.

On the question for excepting money bills, as proposed by

Gerry: Yeas 3 (New York, Delaware, Virginia); nays 7 (Massachusetts, Connecticut, New Jersey, Maryland, North Carolina, South Carolina, Georgia).

**Fundamentals in Convention.** Gerry, for the Compromise Committee on Representation, made the following report: *July 5*  
. . . That all bills for raising or appropriating money, and for fixing the salaries of the officers of the government of the United States, shall originate in the first branch of the legislature, and shall not be altered or amended by the second branch: . . .

G. Morris: Was opposed to a restriction of this right in either branch, considered merely in itself, and as unconnected with the point of representation in the second branch. It will disable the second branch from proposing its own money plans, and give the people an opportunity of judging, by comparison, of the merits of those proposed by the first branch. *July 6*

Wilson: Could see nothing like a concession here, on the part of the smaller states. If both branches were to say "yes" or "no," it was of little consequence which should say "yes" or "no" first, which last. If either was, indiscriminately, to have the right of originating, the reverse of the report would, he thought, be most proper; since it was a maxim that the least numerous body was the fittest for deliberation—the most numerous, for decision. He observed that this discrimination had been transcribed from the British into several American constitutions. But he was persuaded that, on examination of the American experiments, it would be found to be a "trifle light as air." Nor could he ever discover the advantage of it in the parliamentary history of Great Britain. He hoped, if there was any advantage in the privilege, that it would be pointed out.

Williamson: Thought that if the privilege were not common to both branches, it ought rather to be confined to the second, as the bills in that case would be more narrowly watched, than if they originated with the branch having most of the popular confidence.

Mason: The consideration which weighed with the committee was that the first branch would be the immediate representatives of the people; the second would not. Should the latter have the power of giving away the people's money, they might soon forget the source from whence they received it. We might soon have an aristocracy. He had been much concerned at the principles which had been advanced by some gentlemen, but had the satisfaction to find they did not generally prevail. He was a friend to proportional representation in both branches, but supposed that some points must be yielded for the sake of accommodation.

Wilson: If he had proposed that the second branch should have an independent disposal of public money, the observations of Col. Mason would have been a satisfactory answer. But nothing could be farther from what he had said. His question was, how is the power of the first branch increased, or that of the second diminished, by giving the proposed privilege to the former? Where is the difference, in which branch it begins, if both must concur, in the end?

Gerry: Would not say that the concession was a sufficient one on the part of the small states. But he could not but regard it in the light of a concession. It would make it a constitutional principle that the second branch were not possessed of the confidence of the people in money matters, which would lessen their weight and influence. In the next place, if the second branch were dispossessed of the privilege, they would be deprived of the opportunity which their continuance in office three times as long as the first branch would give them, of making three successive essays in favor of a particular point.

C. Pinckney: Thought it evident that the concession was wholly on one side, that of the large states; the privilege of originating money bills being of no account.

G. Morris: Had waited to hear the good effects of the restriction. As to the alarm sounded, of an aristocracy, his creed was that there never was, nor ever will be, a civilized society without an aristocracy. His endeavor was to keep it as much as possible

from doing mischief. The restriction, if it has any real operation, will deprive us of the services of the second branch in digesting and proposing money bills, of which it will be more capable than the first branch. It will take away the responsibility of the second branch, the great security for good behavior. It will always leave a plea as to an obnoxious money bill that it was disliked but could not be constitutionally amended nor safely rejected. It will be a dangerous source of disputes between the two houses. We should either take the British constitution altogether or make one for ourselves. The executive there has dissolved two houses as the only cure for such disputes. Will our executive be able to apply such a remedy? Every law, directly or indirectly, takes money out of the pockets of the people. Again, what use may be made of such a privilege in case of great emergency? Suppose an enemy at the door, and money instantly and absolutely necessary for repelling him—may not the popular branch avail itself of this duress, to extort concessions from the Senate, destructive of the Constitution itself? He illustrated this danger by the example of the Long Parliament's expedients for subverting the House of Lords; concluding, on the whole, that the restriction would be either useless or pernicious.

Franklin: Did not mean to go into a justification of the report; but as it had been asked what would be the use of restraining the second branch from meddling with money bills, he could not but remark that it was always of importance that the people should know who had disposed of their money, and how it had been disposed of. It was a maxim that those who feel can best judge. This end would, he thought, be best attained if money affairs were to be confined to the immediate representatives of the people. This was his inducement to concur in the report. As to the danger or difficulty that might arise from a negative in the second branch, where the people would not be proportionally represented, it might easily be got over by declaring that there should be no such negative; or, if that will not do, by declaring that there be no such branch at all.

Martin: Said that it was understood in the committee that the difficulties and disputes which had been apprehended should be guarded against in the detailing of the plan.

Wilson: The difficulties and disputes will increase with the attempts to define and obviate them. Queen Anne was obliged to dissolve her Parliament in order to terminate one of these obstinate disputes between the two houses. Had it not been for the mediation of the Crown, no one can say what the result would have been. The point is still *sub judice* in England. He approved of the principles laid down by the Honourable President <sup>1</sup> (Dr. Franklin), his colleague, as to the expediency of keeping the people informed of their money affairs. But thought they would know as much, and be as well satisfied, in one way as in the other.

C. C. Pinckney: Was astonished that this point should have been considered as a concession. He remarked that the restriction as to money bills had been rejected on the merits singly considered, by eight states against three; and that the very states which now called it a concession were then against it, as nugatory or improper in itself.

On the question whether the clause relating to money bills in the report of the committee consisting of a member from each state, should stand as part of the report: Yeas 5 (Connecticut, New Jersey, Delaware, Maryland, North Carolina); nays 3 (Pennsylvania, Virginia, South Carolina); divided 3 (Massachusetts, New York, Georgia).

A question was then raised whether the question was carried in the affirmative; there being but five ayes out of eleven states present. On this question: Yeas 9 (Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, North Carolina, South Carolina, Georgia); nays 2 (New York, Virginia). (In several preceding instances like votes had *sub silentio* been entered as decided in the affirmative.)

July 26      **Agreements Referred to Committee of Detail.** Resolved, that all bills for raising or appropriating money, and for fixing the

<sup>1</sup> He was at that time president of the State of Pennsylvania.

salaries of the officers of the government of the United States, shall originate in the first branch of the legislature of the United States, and shall not be altered or amended by the second branch; . . . Tenth resolution on fundamentals.

**Details in Convention.** All bills for raising or appropriating money, and for fixing the salaries of the officers of government, shall originate in the House of Representatives, and shall not be altered or amended by the Senate. Article IV, Section 5, Committee of Detail. Aug. 6

Each house shall possess the right of originating bills, except in the cases before-mentioned. Article VI, Section 12, Committee of Detail.

C. Pinckney: Moved to strike out Section 5 as giving no peculiar advantage to the House of Representatives, and as clogging the government. If the Senate can be trusted with the many great powers proposed, it surely may be trusted with that of originating money bills. Aug. 8

Gorham: Was against allowing the Senate to *originate*, but was for allowing it only to *amend*.

G. Morris: It is particularly proper that the Senate should have the right of originating money bills. They will sit constantly, will consist of a smaller number, and will be able to prepare such bills with due correctness, and so as to prevent delay of business in the other house.

Mason: Was unwilling to travel over this ground again. To strike out the section was to unhinge the compromise of which it made a part. The duration of the Senate made it improper. He does not object to that duration. On the contrary, he approved of it. But joined with the smallness of the number, it was an argument against adding this to the other great powers vested in that body. His idea of an aristocracy was that it was the government of the few over the many. An aristocratic body, like the screw in mechanics, working its way by slow degrees, and holding fast whatever it gains, should ever be suspected of an encroaching tendency. The purse strings should never be put into its hands.

Mercer: Considered the exclusive power of originating money bills as so great an advantage that it rendered the equality of votes in the Senate ideal and of no consequence.

Butler: Was for adhering to the principle which had been settled.

Wilson: Was opposed to it on its merits, without regard to the compromise.

Ellsworth: Did not think the clause of any consequence; but as it was thought of consequence by some members from the larger states, he was willing it should stand.

Madison: Was for striking it out; considering it as of no advantage to the large states, as fettering the government, and as a source of injurious altercations between the two houses.

On the question for striking out Article IV, Section 5: Yeas 7 (New Jersey, Pennsylvania, Delaware, Maryland, Virginia, South Carolina, Georgia); nays 4 (New Hampshire, Massachusetts, Connecticut, North Carolina).

*Aug. 9* Randolph: Expressed his dissatisfaction at the disagreement yesterday to Section 5, concerning money bills, as endangering the success of the plan, and extremely objectionable in itself; and gave notice that he should move for a reconsideration of the vote.

Williamson: Said he had formed a like intention.

*Aug. 11* Randolph: Moved, according to notice, to reconsider Article IV, Section 5, concerning money bills, which had been struck out. He argued—first, that he had not wished for this privilege, whilst a proportional representation in the Senate was in contemplation; but since an equality had been fixed in that house, the large states would require this compensation at least. Secondly, that it would make the plan more acceptable to the people, because they will consider the Senate as the more aristocratic body and will expect that the usual guards against its influence will be provided according to the example of Great Britain. Thirdly, the privilege will give some advantage to the House of Representatives if it extends to the originating only; but still more, if it restrains the Senate from amending. Fourthly, he called on the smaller states to concur

in the measure, as the condition by which alone the compromise had entitled them to an equality in the Senate. He signified that he should propose, instead of the original section, a clause specifying that the bills in question should be for the purpose of revenue, in order to repel the objection against the extent of the words "*raising money*," which might happen incidentally, and that the Senate should not so amend or alter as to increase or diminish the sum, in order to obviate the inconveniences urged against a restriction of the Senate to a simple affirmation or negative.

Williamson: Seconded the motion.

C. Pinckney: Was sorry to oppose the opportunity gentlemen asked to have the question again opened for discussion, but as he considered it a mere waste of time he could not bring himself to consent to it. He said that, notwithstanding what had been said as to the compromise, he always considered this section as making no part of it. The rule of representation in the first branch was the true condition of that in the second branch. Several others spoke for and against the reconsideration, but without going into the merits.

On the question to reconsider: Yeas 9 (New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, Georgia); nays 1 (Maryland); divided 1 (South Carolina).

Randolph: Moved that the clause be altered so as to read: "Bills for raising money for the *purpose of revenue*, or for appropriating the same, shall originate in the House of Representatives; and shall not be so amended or altered by the Senate as to increase or diminish the sum to be raised, or change the mode of levying it, or the object of its appropriation." He would not repeat his reasons, but barely reminded the members from the smaller states of the compromise by which the larger states were entitled to this privilege. Aug. 13

Mason: This amendment removes all the objections urged against the section, as it stood at first. By specifying *purposes of revenue*, it obviated the objection that the section extended to all bills under which money might incidentally



arise. By authorizing amendments in the Senate, it got rid of the objections that the Senate could not correct errors of any sort, and that it would introduce into the House of Representatives the practice of tacking foreign matter to money bills. These objections being removed, the arguments in favor of the proposed restraint on the Senate ought to have their full force. First, the Senate did not represent the *people*, but the *states*, in their political character. It was improper therefore that it should tax the people. The reason was the same against their doing it as it had been against Congress doing it. Secondly, nor was it in any respect necessary, in order to cure the evils of our republican system. He admitted that, notwithstanding the superiority of the republican form over every other, it had its evils. The chief ones were the danger of the majority oppressing the minority and the mischievous influence of demagogues. The general government of itself will cure them. As the states will not concur at the same time in their unjust and oppressive plans, the general government will be able to check and defeat them, whether they result from the wickedness of the majority or from the misguidance of demagogues. Again the Senate is not, like the House of Representatives, chosen frequently and obliged to return frequently among the people. They are to be chosen by the states for six years—will probably settle themselves at the seat of government—will pursue schemes for their own aggrandizement—will be able, by wearying out the House of Representatives, and taking advantage of their impatience at the close of a long session, to extort measures for that purpose. If they should be paid, as he expected would be yet determined and wished to be so, out of the national treasury, they will, particularly, extort an increase of their wages. A bare negative was a very different thing from that of originating bills. The practice in England was in point. The House of Lords does not represent nor tax the people because not elected by the people. If the Senate can originate, they will in the recess of the legislative sessions, hatch their mischievous projects, for their own purposes, and have their money bills cut and dried

(to use a common phrase) for the meeting of the House of Representatives. He compared the case to Poynings's Law, and signified that the House of Representatives might be rendered by degrees, like the parliament of Paris, the mere depository of the decrees of the Senate. As to the compromise, so much had passed on that subject that he would say nothing about it. He did not mean, by what he had said, to oppose the permanency of the Senate. On the contrary, he had no repugnance to an increase of it, nor to allowing it a negative, though the Senate was not, by its present constitution, entitled to it. But in all events, he would contend that the purse strings should be in the hands of the representatives of the people.

Wilson: Was himself directly opposed to the equality of votes granted to the Senate, by its present constitution. At the same time he wished not to multiply the vices of the system. He did not mean to enlarge on a subject which had been so much canvassed, but would remark, as an insuperable objection against the proposed restriction of money bills to the House of Representatives, that it would be a source of perpetual contentions, where there was no mediator to decide them. The President here could not, like the executive magistrate in England, interpose by a prorogation, or dissolution. This restriction had been found pregnant with altercation in every state where the constitution had established it. The House of Representatives will insert other things in money bills, and by making them conditions of each other destroy the deliberate liberty of the Senate. He stated the case of a preamble to a money bill sent up by the House of Commons in the reign of Queen Anne, to the House of Lords, in which the conduct of the misplaced ministry, who were to be impeached before the Lords, was condemned, the Commons thus extorting a premature judgment without any hearing of the parties to be tried; and the House of Lords being thus reduced to the poor and disgraceful expedient of opposing, to the authority of a law, a protest on their journals against its being drawn into precedent. If there was anything like Poynings's Law in the present case, it was in the attempt to vest the exclusive right

of originating in the House of Representatives, and so far he was against it. He should be equally so if the right were to be exclusively vested in the Senate. With regard to the purse strings, it was to be observed that the purse was to have two strings, one of which was in the hands of the House of Representatives, the other in those of the Senate. Both houses must concur in untying, and of what importance could it be, which untied first, which last. He could not conceive it to be any objection to the Senate's preparing the bills that they would have leisure for that purpose, and would be in the habits of business. War, commerce and revenue were the great objects of the general government. All of them are connected with money. The restriction in favor of the House of Representatives would exclude the Senate from originating any important bills whatever.

Gerry: Considered this as a part of the plan that would be much scrutinized. Taxation and representation are strongly associated in the minds of the people, and they will not agree that any but their immediate representatives shall meddle with their purses. In short, the acceptance of the plan will inevitably fail, if the Senate be not restrained from originating money bills.

G. Morris: All the arguments suppose the right to originate and to tax, to be exclusively vested in the Senate. The effects commented on may be produced by a negative only in the Senate. They can tire out the other house and extort their concurrence in favorite measures as well by withholding their negative as by adhering to a bill introduced by themselves.

Madison: Thought if the substitute offered by Mr. Randolph for the original section is to be adopted, it would be proper to allow the Senate at least so to amend as to *diminish* the sums to be raised. Why should they be restrained from checking the extravagance of the other house? One of the greatest evils incident to republican government was the spirit of contention and faction. The proposed substitute, which in some respects lessened the objections against the section, had a contrary effect with respect to this particular. It laid a foundation

for new difficulties and disputes between the two houses. The word "revenue" was ambiguous. In many acts, particularly in the regulation of trade, the object would be twofold. The raising of revenue would be one of them. How could it be determined which was the primary or predominant one; or whether it was necessary that revenue should be the sole object, in exclusion even of other incidental effects? When the contest was first opened with Great Britain, their power to regulate trade was admitted—their power to raise revenue rejected. An accurate investigation of the subject afterwards proved that no line could be drawn between the two cases. The words "amend or alter" form an equal source of doubt and altercation. When an obnoxious paragraph shall be sent down from the Senate to the House of Representatives, it will be called an origination under the name of an amendment. The Senate may actually couch extraneous matter under that name. In these cases, the question will turn on the *degree* of connection between the matter and object of the bill, and the altercation or amendment offered to it. Can there be a more fruitful source of dispute, or a kind of dispute more difficult to be settled? His apprehensions on this point were not conjectural. Disputes had actually flowed from this source in Virginia, where the Senate can originate no bill. The words "so as to *increase or diminish* the sum to be raised," were liable to the same objections. In levying indirect taxes, which it seemed to be understood were to form the principal revenue of the new government, the sum to be raised would be increased or diminished by a variety of collateral circumstances influencing the consumption, in general—the consumption of foreign or of domestic articles—of this or that particular species of articles—and even by the mode of collection which may be closely connected with the productiveness of a tax. The friends of this section had argued its necessity from the permanency of the Senate. He could not see how this argument applied. The Senate was not more permanent now than in the form it bore in the original propositions of Mr. Randolph, and at the time when no objection whatever was hinted

against its originating money bills. Or if in consequence of a loss of the present question, a proportional vote in the Senate should be reinstated, as has been urged as the indemnification, the permanency of the Senate will remain the same. If the right to originate be vested exclusively in the House of Representatives, either the Senate must yield, against its judgment, to that house—in which case the utility of the check will be lost—or the Senate will be inflexible, and the House of Representatives must adapt its money bill to the views of the Senate; in which case the exclusive right will be of no avail. As to the compromise of which so much had been said, he would make a single observation. There were five states which had opposed the equality of votes in the Senate, viz., Massachusetts, Pennsylvania, Virginia, North Carolina, and South Carolina. As a compensation for the sacrifice extorted from them on this head, the exclusive origination of money bills in the other house had been tendered. Of the five states a majority, viz., Pennsylvania, Virginia, and South Carolina, have uniformly voted against the proposed compensation, on its own merits, as rendering the plan of government still more objectionable. Massachusetts has been divided. North Carolina alone has set a value on the compensation, and voted on that principle. What obligation, then, can the small states be under to concur, against their judgments, in reinstating the section?

Dickinson: Experience must be our only guide. Reason may mislead us. It was not reason that discovered the singular and admirable mechanism of the English constitution. It was not reason that discovered, or ever could have discovered, the odd, and, in the eyes of those who are governed by reason, the absurd mode of trial by jury. Accidents probably produced these discoveries, and experience has given a sanction to them. This is, then, our guide. And has not experience verified the utility of restraining money bills to the immediate representatives of the people? Whence the effect may have proceeded he could not say; whether from the respect with which this privilege inspired the other branches of government, to the House

of Commons, or from the turn of thinking it gave to the people at large with regard to their rights; but the effect was visible and could not be doubted. Shall we oppose, to this long experience, the short experience of eleven years which we had ourselves on this subject? As to disputes, they could not be avoided any way. If both houses should originate, each would have a different bill to which it would be attached, and for which it would contend. He observed that all the prejudices of the people would be offended by refusing this exclusive privilege to the House of Representatives, and these prejudices should never be disregarded by us when no essential purpose was to be served. When this plan goes forth, it will be attacked by the popular leaders. Aristocracy will be the watchword, the shibboleth, among its adversaries. Eight states have inserted in their constitutions the exclusive right of originating money bills in favor of the popular branch of the legislature. Most of them, however, allowed the other branch to amend. This, he thought, would be proper for us to do.

Randolph: Regarded this point as of such consequence that, as he valued the peace of this country, he would press the adoption of it. We had numerous and monstrous difficulties to combat. Surely we ought not to increase them. When the people behold in the Senate the countenance of an aristocracy, and in the President the form at least of a little monarch, will not their alarms be sufficiently raised without taking from their immediate representatives a right which has been so long appropriated to them? The executive will have more influence over the Senate than over the House of Representatives. Allow the Senate to originate in this case, and that influence will be sure to mix itself in their deliberations and plans. The declaration of war, he conceived, ought not to be in the Senate, composed of twenty-six men only, but rather in the other house. In the other house ought to be placed the origination of the means of war. As to commercial regulations which may involve revenue, the difficulty may be avoided by restraining the definition to bills for the *mere* or *sole* purpose

of raising revenue. The Senate will be more likely to corrupt than the House of Representatives, and should therefore have less to do with money matters. His principal object, however, was to prevent popular objections against the plan, and to secure its adoption.

Rutledge: The friends of this motion are not consistent in their reasoning. They tell us that we ought to be guided by the long experience of Great Britain, and not our own experience of eleven years; and yet they themselves propose to depart from it. The *House of Commons* not only have the exclusive right of originating, but the *Lords* are not allowed to alter or amend a money bill. Will not the people say that this restriction is but a mere tub to the whale? They cannot but see that it is of no real consequence; and will be more likely to be displeased with it as an attempt to bubble them than to impute it to a watchfulness over their rights. For his part, he would prefer giving the exclusive right to the Senate, if it was to be given exclusively at all. The Senate being more conversant in business, and having more leisure, will digest the bills much better, and as they are to have no effect, till examined and approved by the House of Representatives, there can be no possible danger. These clauses in the constitutions of the states had been put in through a blind adherence to the British model. If the work was to be done over now, they would be omitted. The experiment in South Carolina, where the senate cannot originate or amend money bills, has shown that it answers no good purpose; and produces the very bad one of continually dividing and heating the two houses. Sometimes, indeed, if the matter of the amendment of the senate is pleasing to the other house, they wink at the encroachment; if it be displeasing, then the constitution is appealed to. Every session is distracted by altercations on this subject. The practice now becoming frequent is for the senate not to make formal amendments, but to send down a schedule of the alterations which will procure the bill their assent.

Carroll: The most ingenious men in Maryland are puzzled to define the case of money bills, or explain the constitution on

that point; though it seemed to be worded with all possible plainness and precision. It is a source of continual difficulty and squabble between the two houses.

McHenry: Mentioned an instance of extraordinary subterfuge to get rid of the apparent force of the constitution.

On the question on the first part of the motion, as to the exclusive originating of money bills in the House of Representatives: Yeas 4 (New Hampshire, Massachusetts, Virginia [Blair and Madison, no; Randolph, Mason, and Washington,<sup>2</sup> aye], North Carolina); nays 7 (Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, South Carolina, Georgia).

On the question on originating by the House of Representatives, and *amending* by the Senate, as reported, Article IV, Section 5: Yeas 4 (New Hampshire, Massachusetts, Virginia, North Carolina); nays 7 (Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, South Carolina, Georgia).

Strong: Moved to amend the article so as to read, "Each house shall possess the right of originating all bills, except bills for raising money for the purposes of revenue, or for appropriating the same, and for fixing the salaries of the officers of the government, which shall originate in the House of Representatives; but the Senate may propose or concur with amendments as in other cases." Aug. 15

Mason: Seconds the motion: He was extremely earnest to take this power from the Senate, who he said could already sell the whole country by means of treaties.

Gorham: Urged the amendment as of great importance. The Senate will first acquire the habit of preparing money bills, and then the practice will grow into an exclusive right of preparing them.

G. Morris: Opposed it as unnecessary and inconvenient.

Williamson: Some think this restriction on the Senate essential to liberty; others think it of no importance. Why should not

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<sup>2</sup> He disapproved, and till now voted against, the exclusive privilege. He gave up his judgment, he said, because it was not of very material weight with him, and was made an essential point with others, who, if disappointed, might be less cordial in other points of real weight.



the former be indulged? He was for an efficient and stable government; but many would not strengthen the Senate, if not restricted in the case of money bills. The friends of the Senate would therefore lose more than they would gain by refusing to gratify the other side. He moved to postpone the subject till the powers of the Senate should be gone over.

Rutledge: Seconds the motion.

On the question for postponing: Yeas 6 (New Hampshire, Massachusetts, Virginia, North Carolina, South Carolina, Georgia); nays 5 (Connecticut, New Jersey, Pennsylvania, Delaware, Maryland).

*Sept. 5* Brearley, for the Committee on Unfinished Business, submitted the following report: Substitute for Article VI, Section 12: "All bills for raising revenue shall originate in the House of Representatives, and shall be subject to alterations and amendments by the Senate: . . ."

G. Morris: Moved to postpone. It had been agreed to in the committee on the ground of compromise; and he should feel himself at liberty to dissent from it, if on the whole he should not be satisfied with certain other parts to be settled.

C. Pinckney: Seconded the motion.

Sherman: Was for giving immediate ease to those who looked on this clause as of great moment, and for trusting to their concurrence in other proper measures.

On the question for postponing: Yeas 9 (New Hampshire, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, North Carolina, South Carolina, Georgia); nays 2 (Massachusetts, Virginia).

*Sept. 8* The clause of the report made on September 5 and postponed was taken up, to wit: "All bills for raising revenue shall originate in the House of Representatives; and shall be subject to alterations and amendments by the Senate. . . ."

It was moved to strike out the words "and shall be subject to alterations and amendments by the Senate," and insert the words used in the constitution of Massachusetts on the same subject, viz., "but the Senate may propose or concur with

amendments, as in other bills"; which was agreed to, *nem. con.*

On the question on the first part of the clause, "all bills for raising revenue shall originate in the House of Representatives": Yeas 9 (New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia); nays 2 (Delaware, Maryland).

**Conclusions in Convention.** All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments, as on other bills. Article I, Section 7, paragraph 2. Report of Committee on Style and Arrangement. *Sept. 12*

The recommendation of the Committee on Style and Arrangement is included in the completed Constitution as Article I, Section 7, paragraph 1. *Sept. 17*

#### IMPEACHMENT PROCEEDINGS

**Details in Convention.** The House of Representatives shall have the sole power of impeachment. Article IV, Section 6, Committee of Detail. *Aug. 6*

This recommendation was agreed to, *nem. con.* *Aug. 9*

**Conclusions in Convention.** The House of Representatives shall . . . have the sole power of impeachment. Article I, Section 2, paragraph 5. Report of Committee on Style and Arrangement. *Sept. 12*

This provision was included in the final draft of the Constitution. *Sept. 17*

#### ELECTORAL PREROGATIVE

[See Chapter 16, "Reconsideration of Fundamentals."] *Sept. 4 and 5*

**Details in Convention.** On a question on the clause referring the eventual appointment of the President to the Senate: Yeas 7 (New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Virginia); nays 1 (North Carolina). Here the call ceased. *Sept. 6*

Madison: Made a motion requiring two-thirds at least of the Senate to be present at the choice of a President.

C. Pinckney: Seconded the motion.

Gorham: Thought it a wrong principle to require more than a majority in any case. In the present, it might prevent for a long time any choice of a President.

On the question moved by Madison and C. Pinckney: Yeas 6 (New Hampshire, Maryland, Virginia, North Carolina, South Carolina, Georgia); nays 4 (Connecticut, New Jersey, Pennsylvania, Delaware); absent 1 (Massachusetts).

Williamson: Suggested as better than an eventual choice by the Senate that this choice should be made by the legislature, voting *by states* and not *per capita*.

Sherman: Suggested "the House of Representatives" as preferable to "the legislature"; and moved accordingly to strike out the words, "The Senate shall immediately choose, etc.," and insert "The House of Representatives shall immediately choose by ballot one of them for President, the members from each state having one vote."

Mason: Liked the latter mode best, as lessening the aristocratic influence of the Senate.

On motion of Sherman: Yeas 10 (New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia); nays 1 (Delaware).

G. Morris: Suggested the idea of providing that in all cases the President in office should not be one of the five candidates; but be only re-eligible in case a majority of the electors should vote for him. (This was another expedient for rendering the President independent of the legislative body for his continuance in office.)

Madison: Remarked that as a majority of members would make a quorum in the House of Representatives, it would follow from the amendment of Mr. Sherman giving the election to a majority of states, that the President might be elected by two states only, Virginia and Pennsylvania, which have eighteen members, if these states alone should be present.

On a motion that the eventual election of President, in case of an equality of the votes of the electors, be referred to the House of Representatives: Yeas 7 (New Hampshire, Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia); nays 3 (New Jersey, Delaware, Maryland).

King: Moved to add to the amendment of Mr. Sherman, "But a quorum for this purpose shall consist of a member or members from two-thirds of the states, and also a majority of the whole number of the House of Representatives."

Mason: Liked it, as obviating the remark of Mr. Madison.

The motion, as far as "states," inclusive, was agreed to. On the residue, to wit, "and also a majority of the whole number of the House of Representatives," it passed in the negative: Yeas 5 (Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina); nays 6 (New Hampshire, New Jersey, Delaware, Maryland, South Carolina, Georgia).

[See Chapter 16, "Reconsideration of Fundamentals."]

*Sept. 7,  
12, 15, 17*

## PREROGATIVES OF THE SENATE

### PARTICIPATION IN APPOINTMENTS AND TREATY MAKING

**Fundamentals in Convention.** Resolved, that a national judiciary be established, to consist of one supreme tribunal, the judges of which shall be appointed by the second branch of the national legislature. . . . Eleventh resolution, Committee of the Whole.

*June 19*

Gorham: Would prefer an appointment by the second branch to an appointment by the whole legislature; but he thought even that branch too numerous and too little personally responsible to ensure a good choice. He suggested that the judges be appointed by the executive with the advice and consent of the second branch, in the mode prescribed by the constitution of Massachusetts. This mode had been long practiced in that country and was found to answer perfectly well.

*July 18*

Wilson: Would still prefer an appointment by the executive; but if that could not be attained, would prefer in the next

place the mode suggested by Mr. Gorham. He thought it his duty, however, to move in the first instance, "that the judges be appointed by the executive."

G. Morris: Seconded the motion.

L. Martin: Was strenuous for an appointment by the second branch. Being taken from all the states, it would be best informed of characters, and most capable of making a fit choice.

Sherman: Concurred in the observations of Mr. Martin, adding that the judges ought to be diffused, which would be more likely to be attended to by the second branch than by the executive.

Mason: The mode of appointing the judges may depend in some degree on the mode of trying impeachments of the executive. If the judges were to form a tribunal for that purpose, they surely ought not to be appointed by the executive. There were insuperable objections besides against referring the appointment to the executive. He mentioned, as one, that as the seat of government must be in some one state; and as the executive would remain in office for a considerable time, for four, five, or six years at least, he would insensibly form local and personal attachments within the particular state that would deprive equal merit elsewhere of an equal chance of promotion.

Gorham: As the executive will be responsible, in point of character at least, for a judicious and faithful discharge of his trust, he will be careful to look through all the states for proper characters. The senators will be as likely to form their attachments at the seat of government where they reside as the executive. If they cannot get the man of the particular state to which they may respectively belong, they will be indifferent to the rest. Public bodies feel no personal responsibility, and give full play to intrigue and cabal. Rhode Island is a full illustration of the insensibility to character produced by a participation of numbers in dishonorable measures, and of the length to which a public body may carry wickedness and cabal.

G. Morris: Supposed it would be improper for an impeachment

of the executive to be tried before the judges. The latter would in such case be drawn into intrigues with the legislature, and an impartial trial would be frustrated. As they would be much about the seat of government, they might even be previously consulted, and arrangements might be made for a prosecution of the executive. He thought, therefore, that no argument could be drawn from the probability of such a plan of impeachments against the motion before the House.

Madison: Suggested that the judges might be appointed by the executive, with the concurrence of one-third at least of the second branch. This would unite the advantage of responsibility in the executive, with the security afforded in the second branch against any incautious or corrupt nomination by the executive.

Sherman: Was clearly for an election by the Senate. It would be composed of men nearly equal to the executive, and would of course have on the whole more wisdom. They would bring into their deliberations a more diffusive knowledge of characters. It would be less easy for candidates to intrigue with them than with the executive magistrate. For these reasons he thought there would be a better security for a proper choice in the Senate than in the executive.

Randolph: It is true that when the appointment of the judges was vested in the second branch an equality of votes had not been given to it. Yet he had rather leave the appointment there than give it to the executive. He thought the advantage of personal responsibility might be gained in the Senate by requiring the respective votes of the members to be entered on the journal. He thought, too, that the hope of receiving appointments would be more diffusive if they depended on the Senate, the members of which would be diffusively known, than if they depended on a single man who could not be personally known to a very great extent; and consequently that opposition to the system would be so far weakened.

Bedford: Thought there were solid reasons against leaving the appointment to the executive. He must trust more to information than the Senate. It would put it in his power to gain over

the larger states by gratifying them with a preference of their citizens. The responsibility of the executive, so much talked of, was chimerical. He could not be punished for mistakes.

Gorham: Remarked that the Senate could have no better information than the executive. They must like him trust to information from the members belonging to the particular state where the candidate resided. The executive would certainly be more answerable for a good appointment as the whole blame of a bad one would fall on him alone. He did not mean that he would be answerable under any other penalty than that of public censure, which with honorable minds was a sufficient one.

On the question for referring the appointment of the judges to the executive instead of the second branch: Yeas 2 (Massachusetts, Pennsylvania); nays 6 (Connecticut, Delaware, Maryland, Virginia, North Carolina, South Carolina); absent 1 (Georgia).

Gorham: Moved "that the judges be nominated and appointed by the executive, by and with the advice and consent of the second branch; and every such nomination shall be made at least —— days prior to such appointment." This mode, he said, had been ratified by the experience of a hundred and forty years in Massachusetts. If the appointment should be left to either branch of the legislature, it will be a mere piece of jobbing.

G. Morris: Seconded and supported the motion.

Sherman: Thought it less objectionable than an absolute appointment by the executive; but disliked it as too much fettering the Senate.

On the question of Gorham's motion: Yeas 4 (Massachusetts, Pennsylvania, Maryland, Virginia); nays 4 (Connecticut, Delaware, North Carolina, South Carolina); absent 1 (Georgia).

Madison: Moved "that the judges should be nominated by the executive, and such nomination should become an appointment if not disagreed to within —— days by two-thirds of the second branch."

G. Morris: Seconded the motion.

**Agreements Referred to Committee of Detail.** Resolved, that a national judiciary be established, to consist of one supreme tribunal, the judges of which shall be appointed by the second branch of the national legislature; . . . Fourteenth resolution on fundamentals. *July 26*

**Details in Convention.** The Senate of the United States shall have power to make treaties, and to appoint ambassadors, and judges of the Supreme Court. Article IX, Section 1, Committee of Detail. *Aug. 6*

**Mercer:** Should hereafter be against returning to a reconsideration of this section. He contended (alluding to Mr. Mason's observations) that the Senate ought not to have the power of treaties. This power belonged to the executive department; adding that treaties would not be final, so as to alter the laws of the land, till ratified by legislative authority. This was the case of treaties in Great Britain, particularly the late treaty of commerce with France. *Aug. 15*

**Mason:** Did not say that a treaty would repeal a law, but that the Senate, by means of treaties, might alienate territory, etc., without legislative sanction. The cessions of the British Islands in the West Indies, by treaty alone, were an example. If Spain should possess herself of Georgia, therefore, the Senate might by treaty dismember the Union. He wished the motion to be decided now, that the friends of it might know how to conduct themselves.

**G. Morris:** Argued against the appointment of officers by the Senate. He considered the body as too numerous for that purpose; as subject to cabal; and as devoid of responsibility. If judges were to be tried by the Senate, according to a late report of a committee, it was particularly wrong to let the Senate have the filling of vacancies which its own decrees were to create. *Aug. 23*

**Wilson:** Was of the same opinion and for like reasons.

Article IX, Section 1, being resumed, to wit: "The Senate of the United States shall have power to make treaties, and to appoint ambassadors, and judges of the Supreme Court":



Madison: Observed that the Senate represented the states alone; and that for this as well as other obvious reasons, it was proper that the President should be an agent in treaties.

G. Morris: Did not know that he should agree to refer the making of treaties to the Senate at all, but for the present would move to add, as an amendment to the section, after "treaties," the following: "but no treaty shall be binding on the United States which is not ratified by law."

Madison: Suggested the inconvenience of requiring a legal *ratification* of treaties of alliance, for the purposes of war, etc., etc., etc.

Gorham: Many other disadvantages must be experienced, if treaties of peace and all negotiations are to be previously ratified; and if not previously, the ministers would be at a loss how to proceed. What would be the case in Great Britain if the King were to proceed in this manner? American ministers must go abroad not instructed by the same authority (as will be the case with other ministers) which is to ratify their proceedings.

G. Morris: As to treaties of alliance, they will oblige foreign powers to send their ministers here, the very thing we should wish for. Such treaties could not be otherwise made if his amendment should succeed. In general he was not solicitous to multiply and facilitate treaties. He wished none to be made with Great Britain till she should be at war. Then a good bargain might be made with her. So with other foreign powers. The more difficulty in making treaties, the more value will be set on them.

Wilson: In the most important treaties, the King of Great Britain, being obliged to resort to Parliament for the execution of them, is under the same fetters as the amendment of Mr. Morris's will impose on the Senate. It was refused yesterday to permit even the legislature to lay duties on exports. Under the clause without the amendment, the Senate alone can make a treaty requiring all the rice of South Carolina to be sent to some one particular port.

Dickinson: Concurred in the amendment as most safe and proper, though he was sensible it was unfavorable to the little states, which would otherwise have an *equal* share in making treaties.

Johnson: Thought there was something of solecism in saying that the acts of a minister with plenipotentiary powers from one body should depend for ratification on another body. The example of the King of Great Britain was not parallel. Full and complete power was vested in him. If the Parliament should fail to provide the necessary means of execution, the treaty would be violated.

Gorham: In answer to Mr. Gouverneur Morris, said that negotiations on the spot were not to be desired by us; especially if the whole legislature is to have anything to do with treaties. It will be generally influenced by two or three men, who will be corrupted by the ambassadors here. In such a government as ours, it is necessary to guard against the government itself being seduced.

Randolph: Observing that almost every speaker had made objections to the clause as it stood, moved in order to a further consideration of the subject, that the motion of Mr. G. Morris should be postponed; and on this question, it was lost, the states being equally divided: Yeas 5 (New Jersey, Pennsylvania, Delaware, Maryland, Virginia); nays 5 (Massachusetts, Connecticut, North Carolina, South Carolina, Georgia).

On G. Morris's motion: Yeas 1 (Pennsylvania); nays 8 (Massachusetts, Connecticut, New Jersey, Delaware, Maryland, Virginia, South Carolina, Georgia); divided 1 (North Carolina). The several clauses of Article IX, Section 1, were then separately postponed, after inserting "and other public ministers" next after "ambassadors."

Madison: Hinted for consideration whether a distinction might not be made between different sorts of treaties; allowing the President and Senate to make treaties eventual, and of alliance for limited terms, and requiring the concurrence of the whole legislature in other treaties.

The first section of Article IX was finally referred, *nem. con.*, to the committee of five.<sup>3</sup>

Sept. 4 Brearley, for the Committee on Unfinished Business, submitted the following proposition: The President, by and with the advice and consent of the Senate, shall have power to make treaties; and he shall nominate, and, by and with the advice and consent of the Senate, shall appoint ambassadors, and other public ministers, judges of the Supreme Court, and all other officers of the United States whose appointments are not otherwise herein provided for. But no treaty shall be made without the consent of two-thirds of the members present.

Sept. 7 Wilson: Moved to add, after the word "Senate," the words "and House of Representatives." As treaties, he said, are to have the operation of laws, they ought to have the sanction of laws also. The circumstance of secrecy in the business of treaties formed the only objection; but this, he thought, so far as it was inconsistent with obtaining the legislative sanction, was outweighed by the necessity of the latter.

Sherman: Thought the only question that could be made was whether the power could be safely trusted to the Senate. He thought it could; and that the necessity of secrecy in the case of treaties forbade a reference of them to the whole legislature.

Fitzsimons: Seconded the motion of Mr. Wilson.

On the question: Yeas 1 (Pennsylvania); nays 10 (New Hampshire, Massachusetts, Connecticut, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia).

The first sentence, as to making treaties, was then agreed to, *nem. con.*

On the clause, "He shall nominate, etc.—appoint ambassadors, etc.":

Wilson: Objected to the mode of appointing, as blending a branch of the legislature with the executive. Good laws are of no effect without a good executive, and there can be no good executive without a responsible appointment of officers to

<sup>3</sup> [See Chapter 16, September 4, for final solution of treaty-making.]

execute. Responsibility is in a manner destroyed by such an agency of the Senate. He would prefer the council proposed by Col. Mason; provided its advice should not be made obligatory on the President.

C. Pinckney: Was against joining the Senate in these appointments, except in the instances of ambassadors, who he thought ought not to be appointed by the President.

G. Morris: Said that as the President was to nominate, there would be responsibility; and as the Senate was to concur, there would be security. As Congress now make appointments, there is no responsibility.

Gerry: The idea of responsibility in the nomination to offices is chimerical. The President cannot know all characters and can therefore always plead ignorance.

King: As the idea of a council, proposed by Col. Mason, has been supported by Mr. Wilson, he would remark that most of the inconveniences charged on the Senate are incident to a council of advice. He differed from those who thought the Senate would sit constantly. He did not suppose it was meant that all the minute officers were to be appointed by the Senate or any other original source, but by the higher officers of the departments to which they belong. He was of opinion, also, that the people would be alarmed at an unnecessary creation of new corps, which must increase the expense as well as influence of the government.

On the question on these words in the clause, viz.: "He shall nominate, and, by and with the advice and consent of the Senate, shall appoint ambassadors and other public ministers and consuls and judges of the Supreme Court," it was agreed to, *nem. con.*, the insertion of "and consuls" having first taken place.

On the question on the following words: "and all other officers of the United States": Yeas 9 (New Hampshire, Massachusetts, Connecticut, New Jersey, Delaware, Maryland, Virginia, North Carolina, Georgia); nays 2 (Pennsylvania, South Carolina).

On motion of Spaight that "the President shall have power to

fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of the next session of the Senate," it was agreed to, *nem. con.* The fourth section: "The President, by and with the advice and consent of the Senate, shall have power to make treaties. *But no treaty shall be made without the consent of two-thirds of the members present,*" being considered and the last clause being before the House:

Wilson: Thought it objectionable to require the concurrence of two-thirds, which puts it into the power of a minority to control the will of a majority.

King: Concurred in the objection; remarking that as the executive was here joined in the business, there was a check which did not exist in Congress, where the concurrence of two-thirds was required.

Madison: Moved to insert, after the word "treaty," the words "except treaties of peace"; allowing these to be made with less difficulty than other treaties. It was agreed to, *nem. con.*

Madison: Then moved to authorize a concurrence of two-thirds of the Senate to make treaties of peace, without the concurrence of the President. The President, he said, would necessarily derive so much power and importance from a state of war that he might be tempted, if authorized, to impede a treaty of peace.

Butler: Seconded the motion.

Gorham: Thought the security unnecessary, as the means of carrying on the war would not be in the hands of the President but of the legislature.

G. Morris: Thought the power of the President in this case harmless; and that no peace ought to be made without the concurrence of the President, who was the general guardian of the national interests.

Butler: Was strenuous for the motion, as a necessary security against ambitious and corrupt presidents. He mentioned the late perfidious policy of the stadtholder in Holland, and the artifices of the Duke of Marlborough to prolong the war of which he had the management.

Gerry: Was of opinion that in treaties of peace a greater rather than a less proportion of votes was necessary than in other treaties. In treaties of peace the dearest interests will be at stake, as the fisheries, territories, etc. In treaties of peace also there is more danger to the extremities of the continent, of being sacrificed, than on any other occasion.

Williamson: Thought that treaties of peace should be guarded at least by requiring the same concurrence as in other treaties.

On the motion of Madison and Butler: Yeas 3 (Maryland, South Carolina, Georgia); nays 8 (New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina).

On the part of the clause concerning treaties, amended by the exception as to treaties of peace: Yeas 8 (New Hampshire, Massachusetts, Connecticut, Delaware, Maryland, Virginia, North Carolina, South Carolina); nays 3 (New Jersey, Pennsylvania, Georgia).

Williamson and Spaight: Moved "that no treaty of peace affecting territorial rights should be made without the concurrence of two-thirds of the members of the Senate present."

King: It will be necessary to look out for securities for some other rights, if this principle be established; he moved to extend the motion to "all present rights of the United States."

King: Moved to strike out the exception of treaties of peace, from the general clause requiring two-thirds of the Senate for making treaties. *Sept. 8*

Wilson: Wished the requisition of two-thirds to be struck out altogether. If the majority cannot be trusted, it was a proof, as observed by Mr. Gorham, that we were not fit for one society.

A reconsideration of the whole clause was agreed to.

G. Morris: Was against striking out the exception of treaties of peace. If two-thirds of the Senate should be required for peace, the legislature will be unwilling to make war for that reason, on account of the fisheries, or the Mississippi, the two great objects of the Union. Besides, if a majority of the Senate be for peace, and are not allowed to make it, they will be apt to

effect their purpose in the more disagreeable mode of negating the supplies for the war.

Williamson: Remarked that treaties are to be made in the branch of the government where there may be a majority of the states without a majority of the people. Eight men may be a majority of a quorum and should not have the power to decide the conditions of peace. There would be no danger that the exposed states, as South Carolina or Georgia, would urge an improper war for the western territory.

Wilson: If two-thirds are necessary to make peace, the minority may perpetuate war against the sense of the majority.

Gerry: Enlarged on the danger of putting the essential rights of the Union in the hands of so small a number as a majority of the Senate, representing perhaps not one-fifth of the people. The Senate will be corrupted by foreign influence.

Sherman: Was against leaving the rights established by the treaty of peace to the Senate; and moved to annex a proviso that no such rights should be ceded without the sanction of the legislature.

G. Morris: Seconded the ideas of Mr. Sherman.

Madison: Observed that it had been too easy in the present Congress to make treaties, although nine states were required for the purpose.

On the question for striking out "except treaties of peace": Yeas 8 (New Hampshire, Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia); nays 3 (New Jersey, Delaware, Maryland).

Wilson and Dayton: Moved to strike out the clause requiring two-thirds of the Senate for making treaties.

On the question: Yeas 1 (Delaware); nays 9 (New Hampshire, Massachusetts, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia); divided 1 (Connecticut).

Rutledge and Gerry: Moved that "no treaty shall be made without the consent of two-thirds of all the members of the Senate," according to the example in the present Congress.

Gorham: There is a difference in the case, as the President's consent will also be necessary in the new government.

On the question: Yeas 3 (North Carolina, South Carolina, Georgia); nays 8 (New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia).

Sherman: Moved that "no treaty shall be made without a majority of the whole number of the Senate."

Gerry: Seconded him.

Williamson: This will be less security than two-thirds, as now required.

Sherman: It will be less embarrassing.

On the question, it passed in the negative: Yeas 5 (Massachusetts, Connecticut, Delaware, South Carolina, Georgia); nays 6 (New Hampshire, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina).

Williamson and Gerry: Moved "that no treaty should be made without previous notice to the members, and a reasonable time for their attending."

On the question: All the states no; except North Carolina, South Carolina, and Georgia, yea.

On a question on the clause of the report relating to treaties by two-thirds of the Senate: All the states were aye; except Pennsylvania, New Jersey, and Georgia, nay.

**Conclusions in Convention.** He [the President] shall have power by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States whose appointments are not herein otherwise provided for. Article II, Section 2, paragraph 2. Report of Committee on Style and Arrangement.

*Sept. 12*

The recommendation of the committee became a part of the completed Constitution on this date.

*Sept. 17*



## COURT OF IMPEACHMENT

- Aug. 22*    **Details in Convention.** Rutledge, for the Committee of Detail, submitted the following report: "At the end of the second section of the eleventh article, add 'the judges of the Supreme Court shall be triable by the Senate, on impeachment by the House of Representatives.' "
- Sept. 4*    Brearley, for the Committee on Unfinished Business, submitted the following recommendation: In the place of Article IX, Section 1, to be inserted: "The Senate of the United States shall have power to try all impeachments; but no person shall be convicted without the concurrence of two-thirds of the members present."
- Sept. 8*    [Deliberations on "Impeachment" in Chapter 19 include the following discussions:]
- Madison: Objected to a trial of the President by the Senate, especially as he was to be impeached by the other branch of the legislature; and for any act which might be called a misdemeanor. The President under these circumstances was made improperly dependent. He would prefer the Supreme Court for the trial of impeachments; or rather, a tribunal of which that should form a part.
- G. Morris: Thought no other tribunal than the Senate could be trusted. The Supreme Court were too few in number, and might be warped or corrupted. He was against a dependence of the executive on the legislature, considering the legislative tyranny the great danger to be apprehended; but there could be no danger that the Senate would say untruly, on their oaths, that the President was guilty of crimes or facts, especially as in four years he can be turned out.
- C. Pinckney: Disapproved of making the Senate the court of impeachments, as rendering the President too dependent on the legislature. If he opposes a favorite law, the two houses will combine against him, and under the influence of heat and faction throw him out of office.
- Williamson: Thought there was more danger of too much lenity than of too much rigor towards the President, considering the

number of cases in which the Senate was associated with the President.

Sherman: Regarded the Supreme Court as improper to try the President, because the judges would be appointed by him.

On motion by Madison to strike out the words "by the Senate" after the word "conviction": Yeas 2 (Pennsylvania, Virginia); nays 9 (New Hampshire, Massachusetts, Connecticut, New Jersey, Delaware, Maryland, North Carolina, South Carolina, Georgia).

G. Morris: Moved to add to the third clause of the report made on the fourth of September, the words "and every member shall be on oath"; which being agreed to, and a question taken on the clause so amended, viz.: "The Senate of the United States shall have power to try all impeachments; but no person shall be convicted without the concurrence of two-thirds of the members present; and every member shall be on oath": Yeas 9 (New Hampshire, Massachusetts, Connecticut, New Jersey, Delaware, Maryland, North Carolina, South Carolina, Georgia); nays 2 (Pennsylvania, Virginia).

**Conclusions in Convention.** The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath. When the President of the United States is tried, the Chief Justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present. Article I, Section 3, paragraph 6. Report of Committee on Style and Arrangement. *Sept. 12*

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to the law. Article I, Section 3, paragraph 7. Report of Committee on Style and Arrangement.

Rutledge and G. Morris: Moved "that persons impeached be suspended from their offices, until they be tried and acquitted." *Sept. 14*

Madison: The President is made too dependent already on the legislature by the power of one branch to try him in consequence of an impeachment by the other. This intermediate suspension will put him in the power of one branch only. They can at any moment, in order to make way for the functions of another who will be more favorable to their views, vote a temporary removal of the existing magistrate.

King: Concurred in the opposition to the amendment.

On the question to agree to it: Yeas 3 (Connecticut, South Carolina, Georgia); nays 8 (New Hampshire, Massachusetts, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina).

*Sept. 17* The recommendations of the Committee on Style and Arrangement are included in the completed Constitution approved this day.

#### ELECTORAL PREROGATIVE

*Sept. 4* **Details in Convention.** Brearley, for the Committee on Unfinished Business, submitted the following report: To be inserted in Article X, Section 1: . . . and in every case after the choice of the President, the person having the greatest number of votes shall be Vice President; but if there should remain two or more who have equal votes, the Senate shall choose from them the Vice President.

*Sept. 6* The report, as amended, stands: And in every case after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice President. But if there should remain two or more who have equal votes, the Senate shall choose from them the Vice President.

*Sept. 12* **Conclusions in Convention.** . . . In every case after the choice of the President by the representatives, the person having the greatest number of votes of the electors shall be the Vice President. But if there should remain two or more who have equal votes, the Senate shall choose from them, by ballot, the Vice President. Article II, Section 1, paragraph 3. Report of Committee on Style and Arrangement.

Election of Vice President by the Senate as finally approved by the Convention: . . . In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice President. But if there should remain two or more who have equal votes, the Senate shall choose from them, by ballot, the Vice President. Article II, Section 1, paragraph 3. Sept. 17

## PREROGATIVES OF BOTH HOUSES

## ELECTION OF OFFICERS

Details in Convention. It [the House of Representatives] shall choose its Speaker and other officers. Article IV, Section 6, Committee of Detail. Aug. 6

The Senate shall choose its own president and other officers. Article V, Section 4, Committee of Detail.

Article IV, Section 6, agreed to, *nem. con.* Aug. 9

Brearley, for the Committee on Unfinished Business, made the following further report: The Vice President shall be ex-officio president of the Senate; except when they sit to try the impeachment of the President, in which case the Chief Justice shall preside, and excepting also when he shall exercise the powers and duties of President; in which case, and in case of his absence, the Senate shall choose a president pro tempore. The Vice President, when acting as president of the Senate, shall not have a vote unless the house be equally divided. Sept. 4

Conclusions in Convention. The House of Representatives shall choose their Speaker and other officers; . . . Article I, Section 2, paragraph 5. Report of Committee on Style and Arrangement. Sept. 12

The Senate shall choose their other officers, and also a president pro tempore, in the absence of the Vice President, or when he shall exercise the office of President of the United States. Article I, Section 3, paragraph 5. Report of Committee on Style and Arrangement.

- Sept. 17* These recommendations of the Committee on Style and Arrangement became parts of the completed Constitution on this date.

#### CONTESTED ELECTIONS

- Aug. 6* **Details in Convention.** Each house shall be the judge of the elections, returns and qualifications, of its own members. Article VI, Section 4, Committee of Detail.
- Aug. 10* Article VI, Section 4, was agreed to, *nem. con.*
- Sept. 12* **Conclusions in Convention.** Each house shall be the judge of the elections, returns and qualifications of its own members, . . . Article I, Section 5, paragraph 1. Report of Committee on Style and Arrangement.
- Sept. 17* The final draft of the Constitution, adopted this day, contained these provisions as recommended by the Committee on Style and Arrangement.

#### DISCIPLINE OF MEMBERS

- Aug. 6* **Details in Convention.** Each house may . . . punish its members for disorderly behavior; and may expel a member. Article VI, Section 6, Committee of Detail.
- Aug. 10* Madison: Observed that the right of expulsion was too important to be exercised by a bare majority of a quorum; and, in emergencies of faction, might be dangerously abused. He moved that "with the concurrence of two-thirds" might be inserted between "may" and "expel."
- Randolph and Mason: Approved the idea.
- G. Morris: This power may be safely trusted to a majority. To require more may produce abuses on the side of the minority. A few men, from factious motives, may keep in a member who ought to be expelled.
- Carroll: Thought that the concurrence of two-thirds, at least, ought to be required.
- On the question requiring two-thirds, in cases of expelling a member: Ten states were in the affirmative; divided 1 (Penn-

sylvania). Article VI, Section 6, as thus amended, was then agreed to, *nem. con.*

**Conclusions in Convention.** Each house may . . . punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member. Article I, Section 5, paragraph 2. Report of Committee on Style and Arrangement. *Sept. 12*

The final draft of the Constitution, adopted on this day, contained these provisions as recommended by the Committee on Style and Arrangement. *Sept. 17*

#### RULES OF PROCEDURE

**Details in Convention.** Each house may determine the rules of its proceedings; . . . Article VI, Section 6, Committee of Detail. *Aug. 6*

**Conclusions in Convention.** Each house may determine the rules of its proceedings; . . . Article I, Section 5, paragraph 2. Report of Committee on Style and Arrangement. *Sept. 12*

The final draft of the Constitution, adopted on this day, contained this provision as recommended by the Committee on Style and Arrangement. *Sept. 17*

#### JUDICIAL EXPLICATIONS OF THE TREATY POWER

Hauenstein v. Lynham, 100 U.S. 483 (1880)

Head Money Cases, 112 U.S. 580 (1884)

Missouri v. Holland, 252 U.S. 416 (1920)

## CHAPTER 14

### POWERS OF CONGRESS

#### DEVELOPMENT OF FUNDAMENTALS

May 29 Preliminaries in Committee of the Whole. Resolved, that each branch ought to possess the right of originating acts; that the national legislature ought to be empowered to enjoy the legislative rights vested in Congress by the Confederation, and moreover to legislate in all cases to which the separate states are incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual legislation; . . . Proposition in Virginia Plan.

May 31 The sixth resolution, stating the *cases in which the national legislature ought to legislate*, was next taken into discussion. On the question *whether each branch should originate laws*, there was an unanimous affirmative without debate. On the question *for transferring all the legislative powers of the existing Congress to this assembly*, there was also an unanimous affirmative, without debate.

On the proposition *for giving legislative power in all cases to which the state legislatures were individually incompetent*:

C. Pinckney and Rutledge: Objected to the vagueness of the term "incompetent," and said they could not well decide how to vote until they should see an exact enumeration of the powers comprehended by this definition.

Butler: Repeated his fears that we were running into an extreme in taking away the powers of the states; and called on Mr. Randolph for the extent of his meaning.

Randolph: Disclaimed any intention to give indefinite powers to the national legislature, declaring that he was entirely opposed to such an inroad on the state jurisdictions, and that he did not think any considerations whatever could ever change his determination. His opinion was fixed on this point.

Madison: Said that he had brought with him into the Convention a strong bias in favor of an enumeration and definition of the powers necessary to be exercised by the national legislature; but had also brought doubts concerning its practicability. His wishes remained unaltered, but his doubts had become stronger. What his opinion might ultimately be, he could not yet tell. But he should shrink from nothing which should be found essential to such a form of government as would provide for the safety, liberty and happiness of the community. This being the end of all our deliberations, all the necessary means for attaining it must, however reluctantly, be submitted to.

On the question for giving powers, in cases to which the states are not competent: Yeas 9 (Massachusetts, New York, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia); divided 1 (Connecticut).

The clause, *giving powers necessary to preserve harmony among the states*, was agreed to without debate or dissent.

**Fundamentals in Convention.** Resolved, that each branch ought to possess the right of originating acts. Fifth resolution, Committee of the Whole. June 19

Resolved, that the national legislature ought to be empowered to enjoy the legislative rights vested in Congress by the Confederation; and moreover to legislate in all cases to which the separate states are incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual legislation. . . . Sixth resolution, Committee of the Whole.

The fifth resolution, "that each branch have the right of originating acts," was agreed to, *nem. con.* June 26



July 16

The sixth resolution in the report from the Committee of the Whole House, which had been postponed, in order to consider the seventh and eighth resolutions, was now resumed.

"That the national legislature ought to possess the legislative rights vested in Congress by the Confederation," was agreed to, *nem. con.*

"And moreover to legislate in all cases to which the separate states are incompetent; or in which the harmony of the United States may be interrupted by the exercise of individual legislation," being read for a question:

Butler: Calls for some explanation of the extent of this power, particularly of the word "incompetent." The vagueness of the terms rendered it impossible for any precise judgment to be formed.

Gorham: The vagueness of the terms constitutes the propriety of them. We are now establishing general principles, to be extended hereafter into details, which will be precise and explicit.

Rutledge: Urged the objection started by Mr. Butler; and moved that a clause should be committed, to the end that a specification of the powers comprised in the general terms might be reported.

On the question for commitment, the votes were equally divided: Yeas 5 (Connecticut, Maryland, Virginia, South Carolina, Georgia); nays 5 (Massachusetts, New Jersey, Pennsylvania, Delaware, North Carolina). So it was lost.

July 17

Sherman: Observed that it would be difficult to draw the line between the powers of the general legislature and those to be left with the states; that he did not like the definition contained in the resolution; and proposed, in its place, to the words "individual legislation," inclusive, to insert "to make laws binding on the people of the United States in all cases which may concern the common interests of the Union; but not to interfere with the government of the individual states in any matters of internal police which respect the government of such states only, and wherein the general welfare of the United States is not concerned."

Wilson: Seconded the amendment as better expressing the general principle.

G. Morris: Opposed it. The internal police, as it would be called and understood by the states, ought to be infringed in many cases, as in the case of paper money, and other tricks by which citizens of other states may be affected.

Sherman: In explanation of his idea, read an enumeration of powers, including the power of levying taxes on trade, but not the power of *direct taxation*.

G. Morris: Remarked the omission, and inferred that for the deficiencies of taxes on consumption, it must have been the meaning of Mr. Sherman that the general government should recur to quotas and requisitions, which are subversive of the idea of government.

Sherman: Acknowledged that his enumeration did not include direct taxation. Some provision, he supposed, must be made for supplying the deficiency of other taxation, but he had not formed any.

On the question on Sherman's motion, it passed in the negative: Yeas 2 (Connecticut, Maryland); nays 8 (Massachusetts, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia).

Bedford: Moved that the second member of the sixth resolution be so altered as to read, "and moreover to legislate in all cases for the general interests of the Union, and also in those to which the states are severally incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual legislation."

G. Morris: Seconds the motion.

Randolph: This is a formidable idea, indeed. It involves the power of violating all the laws and constitutions of the states, and of intermeddling with their police. The last member of the sentence is also superfluous, being included in the first.

Bedford: It is not more extensive or formidable than the clause as it stands: *no state* being *separately* competent to legislate for the *general interest* of the Union.

On the question for agreeing to Bedford's motion, it passed in

the affirmative: Yeas 6 (Massachusetts, New Jersey, Pennsylvania, Delaware, Maryland, North Carolina); nays 4 (Connecticut, Virginia, South Carolina, Georgia).

On the sentence as amended, it passed in the affirmative: Yeas 8 (Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina); nays 2 (South Carolina, Georgia).

*July 26* **Agreements Referred to Committee of Detail.** Resolved, that each branch ought to possess the right of originating acts. Fifth resolution on fundamentals.

Resolved, that the national legislature ought to possess the legislative rights vested in Congress by the Confederation; and, moreover, to legislate in all cases for the general interests of the Union, and also in those to which the states are separately incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual legislation. Sixth resolution on fundamentals.

## POWER OVER TERRITORIES AND PROPRIETARY POSSESSIONS

### SEAT OF GOVERNMENT

*July 26* **Fundamentals in Convention.** Mason: Observed that it would be proper, as he thought, that some provision should be made in the Constitution against choosing for the seat of the general government the city or place at which the seat of any state government might be fixed. There were two objections against having them at the same place, which, without mentioning others, required some precaution on the subject. The first was that it tended to produce disputes concerning jurisdiction. The second and principal one was that the intermixture of the two legislatures tended to give a provincial tincture to the national deliberations. He moved that the committee be instructed to receive a clause to prevent the seat of the national government being in the same city or town with the seat of the government of any state longer than until the necessary public buildings could be erected.

A. Martin: Seconded the motion.

G. Morris: Did not dislike the idea, but was apprehensive that such a clause might make enemies of Philadelphia and New York, which had expectations of becoming the seat of the general government.

Langdon: Approved the idea also; but suggested the case of a state moving its seat of government to the national seat after the erection of the public buildings.

Gorham: The precaution may be evaded by the national legislature by delaying to erect the public buildings.

Gerry: Conceived it to be the general sense of America that neither the seat of a state government nor any large commercial city should be the seat of the general government.

Williamson: Liked the idea; but knowing how much the passions of men were agitated by this matter, was apprehensive of turning them against the system. He apprehended, also, that an evasion might be practiced in the way hinted by Mr. Gorham.

C. Pinckney: Thought the seat of a state government ought to be avoided; but that a large town, or its vicinity, would be proper for the seat of the general government.

Mason: Did not mean to press the motion at this time, nor to excite any hostile passions against the system. He was content to withdraw the motion for the present.

Butler: Was for fixing, by the Constitution, the place, and a central one, for the seat of the national government.

Details in Convention. Madison: Submitted, in order to be referred to the Committee of Detail, the following powers, as proper to be added to those of the general legislature: “. . . To exercise exclusively legislative authority at the seat of the general government, and over a district around the same not exceeding ——— square miles; the consent of the legislature of the state or states comprising the same being first obtained.”

*Aug. 18*

C. Pinckney: Submitted, for reference to the Committee of Detail: “To fix and permanently establish the seat of government of the United States, in which they shall possess the exclusive right of soil and jurisdiction.”

- Sept. 5* Brearley, for the Committee on Unfinished Business, submitted the following report: Add: "The legislature of the United States shall have the power . . . To exercise exclusive legislation on all cases whatsoever over such district (not exceeding ten miles square) as may, by cession of particular states and the acceptance of the legislature, become the seat of the government of the United States. . . ."

This recommendation was agreed to, *nem. con.*

- Sept. 12* **Conclusions in Convention.** They [the Congress] shall have power . . . To exercise exclusive legislation, in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of government of the United States, . . . Article I, Section 8, clause 18. Report of Committee on Style and Arrangement.

- Sept. 17* The final draft of the Constitution, approved this day, included the above provision.

#### POWER OVER TERRITORIES

- Aug. 30* **Details in Convention.** During the discussion of the admission of new states, the following motion was made:

Carroll: Moved to add: "Provided, nevertheless, that nothing in this Constitution shall be construed to affect the claim of the United States to vacant lands ceded to them by the treaty of peace." This, he said, might be understood as relating to lands not claimed by any particular states, but he had in view also some of the claims of particular states.

Wilson: Was against the motion. There was nothing in the Constitution affecting, one way or the other, the claims of the United States; and it was best to insert nothing, leaving every thing on that litigated subject *in statu quo*.

Madison: Considered the claim of the United States as in fact favored by the jurisdiction of the judicial power of the United States over controversies to which they should be parties. He thought it best, on the whole, to be silent on the subject. He

did not view the proviso of Mr. Carroll as dangerous; but to make it neutral and fair it ought to go further and declare that the claims of particular states also should not be affected. Sherman: Thought the proviso harmless, especially with the addition suggested by Mr. Madison in favor of the claims of particular states.

Baldwin: Did not wish any undue advantage to be given to Georgia. He thought the proviso proper with the addition proposed. It should be remembered that if Georgia has gained much by the cession in the treaty of peace, she was in danger during the war of a *uti possidetis*.

Rutledge: Thought it wrong to insert a proviso where there was nothing which it could restrain or on which it could operate.

Carroll: Withdrew his motion and moved the following: "Nothing in this Constitution shall be construed to alter the claims of the United States, or of the individual states, to the western territory; but all such claims shall be examined into, and decided upon, by the Supreme Court of the United States."

G. Morris: Moved to postpone this, in order to take up the following: "The legislature shall have power to dispose of, and make all needful rules and regulations respecting, the territory or other property belonging to the United States; and nothing in this Constitution contained shall be so construed as to prejudice any claims, either of the United States or of any particular state." The postponement agreed to, *nem. con.*

L. Martin: Moved to amend the proposition of G. Morris by adding: "But all such claims may be examined into, and decided upon, by the Supreme Court of the United States."

G. Morris: This is unnecessary, as all suits to which the United States are parties are already to be decided by the Supreme Court.

L. Martin: It is proper, in order to remove all doubts on this point.

On the question on L. Martin's amendatory motion: Yeas 2 (New Jersey, Maryland); nays 6 (New Hampshire, Massachusetts,

Connecticut, Pennsylvania, Delaware, Virginia). States not further called, the negatives being sufficient, and the point being given up.

The motion of G. Morris was then agreed to, Maryland alone dissenting.

- Sept. 12* **Conclusions in Convention.** The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States: and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular state. Article IV, Section 3, paragraph 2. Report of Committee on Style and Arrangement.
- Sept. 17* The final draft of the Constitution, approved this day, contained the committee's recommendation without change.

#### FEDERAL PROPERTY

- Sept. 5* **Details in Convention.** Brearley, for the Committee on Unfinished Business, submitted the following report: Add: ". . . and to exercise like authority over all places purchased for the erection of forts, magazines, arsenals, dockyards, and other needful buildings."
- Gerry: Contended that this power might be made use of to enslave any particular state by buying up its territory, and that the strongholds proposed would be a means of awing the state into an undue obedience to the general government.
- King: Thought, himself, the provision unnecessary, the power being already involved; but would move to insert, after the word "purchased" the words "by the consent of the legislature of the state." This would certainly make the power safe.
- G. Morris: Seconded the motion, which was agreed to, *nem. con.*; as was the residue of the clause as amended.
- Sept. 12* **Conclusions in Convention.** They [the Congress] shall have power . . . to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings. Article I, Section 8,

clause 18. Report of Committee on Style and Arrangement.  
 The final draft of the Constitution, approved this day, included the above provision. *Sept. 17*

## JUDICIAL EXPLICATIONS

Kohl v. United States, 91 U.S. 367 (1876)  
 Fort Leavenworth Railway Co. v. Lowe, 114 U.S. 525 (1885)  
 Dorr v. United States, 195 U.S. 138 (1904)  
 Rassmussen v. United States, 197 U.S. 516 (1905)  
 Balzac v. Porto Rico, 258 U.S. 298 (1922)

## POWER TO ADMIT NEW STATES

**Preliminaries in Committee of the Whole.** Resolved, that provision ought to be made for the admission of states lawfully arising within the limits of the United States, whether from a voluntary junction of government and territory, or otherwise, with the consent of a number of voices in the national legislature less than the whole. Proposition in Virginia Plan. *May 29*

Without discussion, this resolution was agreed to. *June 5*

**Fundamentals in Convention.** Resolved, that provision ought to be made for the admission of states lawfully arising within the limits of the United States, whether from a voluntary junction of government and territory, or otherwise, with the consent of a number of voices in the national legislature less than the whole. Fourteenth resolution, Committee of the Whole. *June 19*

This recommendation was agreed to, *nem. con.* *July 18*

**Agreements Referred to Committee of Detail.** Resolved, that provision ought to be made for the admission of states lawfully arising within the limits of the United States, whether from a voluntary junction of government and territory, or otherwise, with the consent of a number of voices in the national legislature less than the whole. Seventeenth resolution on fundamentals. *July 26*



- Aug. 6*     **Details in Convention.** New states lawfully constituted or established within the limits of the United States may be admitted, by the legislature, into this government; but to such admission the consent of two-thirds of the members present in each house shall be necessary. If a new state shall arise within the limits of any of the present states, the consent of the legislatures of such states shall be also necessary to its admission. If the admission be consented to, the new states shall be admitted on the same terms with the original states. But the legislature may make conditions with the new states, concerning the public debt which shall be then subsisting. Article XVII, Committee of Detail.
- Aug. 29*     G. Morris: Moved to strike out the two last sentences, to wit: "If the admission be consented to, the new states shall be admitted on the same terms with the original states. But the legislature may make conditions with the new states, concerning the public debt which shall be then subsisting." He did not wish to bind down the legislature to admit western states on the terms here stated.
- Madison: Opposed the motion; insisting that the western states neither would nor ought to submit to a union which degraded them from an equal rank with the other states.
- Mason: If it were possible by just means to prevent emigrations to the western country, it might be good policy. But go the people will as they find it for their interest, and the best policy is to treat them with that equality which will make them friends not enemies.
- G. Morris: Did not mean to discourage the growth of the western country. He knew that to be impossible. He did not wish, however, to throw the power into their hands.
- Sherman: Was against the motion, and for fixing an equality of privileges by the Constitution.
- Langdon: Was in favor of the motion. He did not know but circumstances might arise, which would render it inconvenient to admit new states on terms of equality.
- Williamson: Was for leaving the legislature free. The existing

*small* states enjoy an equality now, and for *that* reason are admitted to it in the Senate. This reason is not applicable to new western states.

On G. Morris's motion for striking out: Yeas 9 (New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, North Carolina, South Carolina, Georgia); nays 2 (Maryland, Virginia).

L. Martin and G. Morris: Moved to strike out of Article XVII, "but to such admission the consent of two-thirds of the members present shall be necessary."

Before any question was taken on this motion:

G. Morris: Moved the following proposition, as a substitute for the seventeenth article: "New states may be admitted by the legislature into the Union; but no new states shall be erected within the limits of any of the present states without the consent of the legislature of such state, as well as of the general legislature."

The first part, to "Union," inclusive, was agreed to, *nem. con.*

L. Martin: Opposed the latter part. Nothing, he said, would so alarm the limited states as to make the consent of the large states claiming the western lands necessary to the establishment of new states within their limits. It is proposed to guarantee the states. Shall Vermont be reduced by force, in favor of the states claiming it? Frankland and the western county of Virginia were in a like situation.

On G. Morris's motion to substitute, etc., it was agreed to: Yeas 6 (Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia); nays 5 (New Hampshire, Connecticut, New Jersey, Delaware, Maryland).

Article XVII, being before the House, as amended:

Sherman: Was against it. He thought it unnecessary. The Union cannot dismember a state without its consent.

Langdon: Thought there was great weight in the argument of Mr. Luther Martin; and that the proposition substituted by Mr. Gouverneur Morris would excite a dangerous opposition to the plan.

G. Morris: Thought, on the contrary, that the small states would be pleased with the regulation, as it holds up the idea of dismembering the large states.

Butler: If new states were to be erected without the consent of the dismembered states, nothing but confusion would ensue. Whenever taxes should press on the people, demagogues would set up their schemes of new states.

Johnson: Agreed in general with the ideas of Mr. Sherman; but was afraid that, as the clause stood, Vermont would be subjected to New York, contrary to the faith pledged by Congress. He was of opinion that Vermont ought to be compelled to come into the Union.

Langdon: Said his objections were connected with the case of Vermont. If they are not taken in, and remain exempt from taxes, it would prove of great injury to New Hampshire and other neighboring states.

Dickinson: Hoped the article would not be agreed to. He dwelt on the impropriety of requiring the small states to secure the large ones in their extensive claims of territory.

Wilson: When the *majority* of a state wish to divide they can do so. The aim of those in opposition to the article, he perceived, was that the general government should abet the *minority*, and by that means divide a state against its own consent.

G. Morris: If the forced division of the states is the object of the new system, and is to be pointed against one or two states, he expected the gentlemen from these would pretty quickly leave us.

Aug. 30 Carroll: Moved to strike out so much of the article as requires the consent of the state to its being divided. He was aware that the object of this prerequisite might be to prevent domestic disturbances; but such was our situation with regard to the Crown lands, and the sentiments of Maryland on that subject, that he perceived we should again be at sea if no guard was provided for the right of the United States to the back lands. He suggested that it might be proper to provide that nothing in the Constitution should affect the right of the United States to lands ceded by Great Britain in the treaty of

peace; and proposed a commitment to a member from each state. He assured the House that this was a point of a most serious nature. It was desirable, above all things, that the act of the Convention might be agreed to unanimously. But should this point be disregarded, he believed that all risks would be run by a considerable minority, sooner than give their concurrence.

L. Martin: Seconded the motion for a commitment.

Rutledge: Is it to be supposed that the states are to be cut up without their own consent? The case of Vermont will probably be particularly provided for. There could be no room to fear that Virginia or North Carolina would call on the United States to maintain their government over the mountains.

Williamson: Said that North Carolina was well disposed to give up her western lands; but attempts at compulsion were not the policy of the United States. He was for doing nothing in the Constitution, in the present case; and for leaving the whole matter *in statu quo*.

Wilson: Was against the commitment. Unanimity was of great importance, but not to be purchased by the majority's yielding to the minority. He should have no objection to leaving the case of the new states as heretofore. He knew nothing that would give greater or juster alarm than the doctrine that a political society is to be torn asunder without its own consent.

On Carroll's motion for commitment: Yeas 3 (New Jersey, Delaware, Maryland); nays 8 (New Hampshire, Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia).

Sherman: Moved to postpone the substitute for Article XVII, agreed to yesterday, in order to take up the following amendment: "The legislature shall have power to admit other states into the Union; and new states to be formed by the division or junction of states now in the Union with the consent of the legislature of such states." (The first part was meant for the case of Vermont, to secure its admission.)

On the question, it passed in the negative: Yeas 5 (New Hampshire, Massachusetts, Connecticut, Pennsylvania, South Caro-

lina); nays 6 (New Jersey, Delaware, Maryland, Virginia, North Carolina, Georgia).

Johnson: Moved to insert the words, "hereafter formed, or," after the words, "shall be," in the substitute for Article XVII (the more clearly to save Vermont, as being already formed into a state, from a dependence on the consent of New York for her admission). The motion was agreed to, Delaware and Maryland only, dissenting.

G. Morris: Moved to strike out the word "limits" in the substitute, and insert the word "jurisdiction." (This also was meant to guard the case of Vermont; the jurisdiction of New York not extending over Vermont, which was in the exercise of sovereignty, though Vermont was within the asserted limits of New York.)

On this question: Yeas 7 (New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, Virginia); nays 4 (New Jersey, North Carolina, South Carolina, Georgia).

L. Martin: Urged the unreasonableness of forcing and guaranteeing the people of Virginia beyond the mountains, the western people of North Carolina and Georgia, and the people of Maine, to continue under the states now governing them, without the consent of those states to their separation. Even if they should become the *majority*, the majority of *counties*, as in Virginia, may still hold fast the dominion over them. Again the majority may place the seat of government entirely among themselves, and for their own convenience; and still keep the injured parts of the states in subjection, under the guarantee of the general government against domestic violence. He wished Mr. Wilson had thought a little sooner of the value of *political* bodies. In the beginning, when the rights of the small states were in question, they were phantoms, ideal beings. Now when the great states were to be affected, political societies were of a sacred nature. He repeated and enlarged on the unreasonableness of requiring the small states to guarantee the western claims of the large ones. It was said yesterday, by Mr. Gouverneur Morris, that if the large states were to be split to pieces without their consent, their representa-

tives here would take their leave. If the small states are to be required to guarantee them in this manner, it will be found that the representatives of other states will, with equal firmness, take their leave of the Constitution on the table.

L. Martin: Moved to postpone the substituted article, in order to take up the following: "The legislature of the United States shall have power to erect new states within, as well as without the territory claimed by the several states, or either of them; and admit the same into the Union: provided that nothing in this Constitution shall be construed to affect the claim of the United States to vacant lands ceded to them by the late treaty of peace."—Which passed in the negative, New Jersey, Delaware, and Maryland, only, aye.

On the question to agree to G. Morris's substituted article, as amended, in the words following: "New states may be admitted by the legislature into the Union; but no new state shall be hereafter formed or erected within the jurisdiction of any of the present states, without the consent of the legislature of such state, as well as of the general legislature": Yeas 8 (New Hampshire, Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia); nays 3 (New Jersey, Delaware, Maryland).

Dickinson: Moved to add the following clause to the last: "Nor shall any state be formed by the junction of two or more states, or parts thereof, without the consent of the legislature of such states, as well as of the legislature of the United States"; which was agreed to without a count of the votes.

**Conclusions in Convention.** New states may be admitted by the Congress into this Union; but no new states shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states; without the consent of the legislatures of the states concerned, as well as of the Congress. Article IV, Section 3, paragraph 1. Report of Committee on Style and Arrangement.

*Sept. 12*

Article IV, Section 3. "New states may be admitted by the Congress into this Union: but no new state shall be formed or

*Sept. 15*

erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned as well as of the Congress."

Gerry: Moved to insert, after "or parts of states," the words "or a state and part of a state"; which was disagreed to by a large majority; it appearing to be supposed that the case was comprehended in the words of the clause as reported by the committee.

*Sept. 17* The final draft of the Constitution, approved this day, included the provision recommended by the Committee on Style and Arrangement.

#### JUDICIAL EXPLICATIONS

Stearns v. Minnesota, 179 U.S. 223 (1900)

Coyle v. Smith, 221 U.S. 559 (1911)

#### POWER OVER ELECTIONS

##### FEDERAL LEGISLATORS

*Aug. 6* **Details in Convention.** The times, and places, and manner of holding the elections of the members of each house, shall be prescribed by the legislature of each state; but their provisions concerning them may, at any time, be altered by the legislature of the United States. Article VI, Section 1, Committee of Detail.

*Aug. 9* Madison and G. Morris: Moved to strike out "each house" and to insert "the House of Representatives," the right of the legislatures to regulate the times and places, etc., in the election of senators, being involved in the right of appointing them; which was disagreed to.

A division of the question being called for, it was taken on the first part down to, "but their provisions concerning," etc.

The first part was agreed to, *nem. con.*

C. Pinckney and Rutledge: Moved to strike out the remaining

part, viz., "but their provisions concerning them may at any time be altered by the legislature of the United States." The states, they contended, could and must be relied on in such cases.

Gorham: It would be as improper to take this power from the national legislature as to restrain the British Parliament from regulating the circumstances of elections, leaving this business to the counties themselves.

Madison: The necessity of a general government supposes that the state legislatures will sometimes fail or refuse to consult the common interest at the expense of their local convenience or prejudices. The policy of referring the appointment of the House of Representatives to the people and not to the legislatures of the states supposes that the result will be somewhat influenced by the mode. This view of the question seems to decide that the legislatures of the states ought not to have the uncontrolled right of regulating the times, places, and manner, of holding elections. These were words of great latitude. It was impossible to foresee all the abuses that might be made of the discretionary power. Whether the electors should vote by ballot, or viva voce; should assemble at this place or that place; should be divided into districts, or all meet at one place; should all vote for all the representatives, or all in a district vote for a number allotted to the district—these and many other points would depend on the legislatures, and might materially affect the appointments. Whenever the state legislatures had a favorite measure to carry, they would take care so to mould their regulations as to favor the candidates they wished to succeed. Besides, the inequality of the representation in the legislatures of particular states would produce a like inequality in their representation in the national legislature, as it was presumable that the counties having the power in the former case would secure it to themselves in the latter. What danger could there be in giving a controlling power to the national legislature? Of whom was it to consist? First, of a Senate to be chosen by the state legislatures. If the latter, therefore, could be trusted, their representatives could not be dan-



gerous. Secondly, of representatives elected by the same people who elect the state legislatures. Surely, then, if confidence is due to the latter, it must be due to the former. It seemed as improper in principle, though it might be less inconvenient in practice, to give to the state legislatures this great authority over the election of the representatives of the people in the general legislature, as it would be to give to the latter a like power over the election of their representatives in the state legislature.

King: If this power be not given to the national legislature, their right of judging of the returns of their members may be frustrated. No probability has been suggested of its being abused by them. Although this scheme of erecting the general government on the authority of the state legislatures has been fatal to the federal establishment, it would seem as if many gentlemen still foster the dangerous idea.

G. Morris: Observed that the states might make false returns, and then make no provisions for new elections.

Sherman: Did not know but it might be best to retain the clause, though he had himself sufficient confidence in the state legislatures.

The motion of C. Pinckney and Rutledge did not prevail.

The word "respectively" was inserted after the word "state."

On the motion of Mr. Read, the word "their" was struck out, and "regulations in such cases" inserted in place of "provisions concerning them"—the clause then reading: "but regulations, in each of the foregoing cases, may, at any time, be made or altered by the legislature of the United States." This was meant to give the national legislature a power not only to alter the provisions of the states, but to make regulations, in case the states should fail or refuse altogether. Article VI, Section 1, as thus amended, was agreed to, *nem. con.*

Sept. 12 **Conclusions in Convention.** The times, places and manner of holding elections for senators and representatives shall be prescribed in each state by the legislature thereof; but the Congress may at any time by law make or alter such regulations.

Article I, Section 4, paragraph 1. Report of Committee on Style and Arrangement.

Article I, Section 4, "except as to the places of choosing senators," was added, *nem. con.*, to the end of the first clause, in order to exempt the seats of government in the states from the power of Congress. *Sept. 14*

The completed Constitution, approved this day, included the following: The times, places, and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; but Congress may, at any time, by law, make or alter such regulations, except as to the places of choosing senators. Article I, Section 4. *Sept. 17*

#### PRESIDENTIAL ELECTORS

Details in Convention. Brearley, for the Committee on Unfinished Business, submitted the following recommendation: The legislature may determine the time of choosing and assembling the electors, and the manner of certifying and transmitting their votes. *Sept. 4*

On motion, the words, "But the election shall be on the same day throughout the United States," were added after the words "transmitting their votes." *Sept. 6*

The provision thus amended was approved: Yeas 8 (New Hampshire, Connecticut, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia); nays 3 (Massachusetts, New Jersey, Delaware).

Conclusions in Convention. The Congress may determine the time of choosing the electors, and the time in which they shall give their votes; but the election shall be on the same day throughout the United States. Article II, Section 1, paragraph 4. Report of Committee on Style and Arrangement. *Sept. 12*

The completed Constitution, approved this day, included the provision recommended by the Committee on Style and Arrangement. *Sept. 17*

## JUDICIAL EXPLICATIONS

Ex parte Siebold, 100 U.S. 371 (1880)  
 Ex parte Yarbrough, 110 U.S. 651 (1884)  
 Smiley v. Holm, 285 U.S. 355 (1932)

## FISCAL POWERS

## ELECTION OF TREASURER

- Aug. 6*     **Details in Convention.** The legislature of the United States shall have the power . . . to appoint a treasurer by ballot. . . . Article VII, Section 1, clause 9, Committee of Detail.
- Aug. 17*     Gorham: Moved to insert "joint" before ballot, as more convenient, as well as reasonable, than to require the separate concurrence of the Senate.
- C. Pinckney: Seconds the motion.
- Sherman: Opposed it, as favoring the larger states.
- Read: Moved to strike out the clause, leaving the appointment of a treasurer, as of other officers, to the executive. The legislature was an improper body for appointments. Those of the state legislatures were a proof of it. The executive being responsible, would make a good choice.
- Mercer: Seconds the motion of Read.
- On the motion for inserting the word "joint" before "ballot": Yeas 7 (New Hampshire, Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia); nays 3 (Connecticut, New Jersey, Maryland).
- Mason: In opposition to Mr. Read's motion, desired it might be considered, to whom the money would belong; if to the people, the legislature, representing the people, ought to appoint the keepers of it.
- On striking out the clause as amended by inserting "joint": Yeas 4 (Pennsylvania, Delaware, Maryland, South Carolina); nays 6 (New Hampshire, Massachusetts, Connecticut, Virginia, North Carolina, Georgia).
- Sept. 12*     **Conclusions in Convention.** The Congress may by joint ballot

appoint a treasurer. Article I, Section 8, clause 1. Report of Committee on Style and Arrangement.

Rutledge: Moved to strike out this power, and let the treasurer be appointed in the same manner with other officers. *Sept. 14*

Gorham and King: Said that the motion, if agreed to, would have a mischievous tendency. The people are accustomed and attached to that mode of appointing treasurers, and the innovation will multiply objections to the system.

G. Morris: Remarked that if the treasurer be not appointed by the legislature, he will be more narrowly watched and more readily impeached.

Sherman: As the two houses appropriate money, it is best for them to appoint the officer who is to keep it; and to appoint him as they make the appropriation, not by joint, but several votes.

C. C. Pinckney: The treasurer is appointed by joint ballot in South Carolina. The consequence is that bad appointments are made and the legislature will not listen to the faults of their own officer.

On the motion to strike out: Yeas 8 (New Hampshire, Connecticut, New Jersey, Delaware, Maryland, North Carolina, South Carolina, Georgia); nays 3 (Massachusetts, Pennsylvania, Virginia).

#### POWER TO TAX

**Details in Convention.** The legislature of the United States shall have the power to lay and collect taxes, duties, imposts and excises. Article VII, Section 1, clause 1, Committee of Detail. *Aug. 6*

The proportions of direct taxation shall be regulated by the whole number of white and other free citizens and inhabitants of every age, sex, and condition, including those bound to servitude for a term of years, and three-fifths of all other persons not comprehended in the foregoing description (except Indians not paying taxes); which number shall, within six years after the first meeting of the legislature, and within the term of every ten years afterwards, be taken in such a

manner as the said legislature shall direct. Article VII, Section 3, Committee of Detail.

- Aug. 16* L. Martin: Asked what was meant by the Committee of Detail in the expression, "duties" and "imposts." If the meaning were the same, the former was unnecessary; if different, the matter ought to be made clear.
- Wilson: "Duties" are applicable to many objects to which the word "imposts" does not relate. The latter are appropriated to commerce, the former extend to a variety of objects, as stamp duties, etc.
- Carroll: Reminded the Convention of the great difference of interests among the states; and doubts the propriety, in that point of view, of letting a majority be a quorum.
- Mason: Urged the necessity of connecting with the powers of levying taxes, duties, etc., the prohibition in Article VI, Section 4, "that no tax shall be laid on exports." He was unwilling to trust to its being done in a future article. He hoped the northern states did not mean to deny the southern this security. It would hereafter be as desirable to the former, when the latter should become the most populous. He professed his jealousy for the productions of the southern, or, as he called them, the staple states. He moved to insert the following amendment: "provided that no tax, duty, or imposition, shall be laid by the legislature of the United States on articles exported from any state."
- Sherman: Had no objection to the proviso here, other than that it would derange the parts of the report as made by the committee, to take them in such an order.
- Rutledge: It being of no consequence in what order points are decided, he should vote for the clause as it stood, but on condition that the subsequent parts relating to negroes should also be agreed to.
- G. Morris: Considered such a proviso as inadmissible anywhere. It was so radically objectionable that it might cost the whole system the support of some members. He contended that it would not in some cases be equitable to tax imports without

taxing exports; and that taxes on exports would be often the most easy and proper of the two.

Madison: First, the power of laying taxes on exports is proper in itself; and as the states cannot with propriety exercise it separately, it ought to be vested in them collectively. Secondly, it might with particular advantage be exercised with regard to articles in which America was not rivaled in foreign markets, as tobacco, etc. The contract between the French farmers-general and Mr. Morris, stipulating that if taxes should be laid in America on the export of tobacco, they should be paid by the farmers, showed that it was understood by them that the price would be thereby raised in America and consequently the taxes be paid by the European consumer. Thirdly, it would be unjust to the states whose produce was exported by their neighbours to leave it subject to be taxed by the latter. This was a grievance which had already filled New Hampshire, Connecticut, New Jersey, Delaware, and North Carolina with loud complaints, as it related to imports, and they would be equally authorized by taxes by the states on exports. Fourthly, the southern states, being most in danger and most needing naval protection, could the less complain, if the burden should be somewhat heaviest on them. And finally, we are not providing for the present moment only, and time will equalize the situation of the states in this matter. He was, for these reasons, against the motion.

Williamson: Considered the clause proposed against taxes on exports as reasonable and necessary.

Ellsworth: Was against taxing exports; but thought the prohibition stood in the most proper place, and was against deranging the order reported by the committee.

Wilson: Was decidedly against prohibiting general taxes on exports. He dwelt on the injustice and impolicy of leaving New Jersey, Connecticut, etc., any longer subject to the exactions of their commercial neighbors.

Gerry: Thought the legislature could not be trusted with such a power. It might ruin the country. It might be exercised partially, raising one and depressing another part of it.

G. Morris: However the legislative power may be formed, it will, if disposed, be able to ruin the country. He considered the taxing of exports to be in many cases highly politic. Virginia has found her account in taxing tobacco. All countries having peculiar articles tax the exportation of them—as France her wines and brandies. A tax here on lumber would fall on the West Indies, and punish their restrictions on our trade. The same is true of livestock and in some degree of flour. In case of a dearth in the West Indies, we may extort what we please. Taxes on exports are a necessary source of revenue. For a long time the people of America will not have money to pay direct taxes. Seize and sell their effects, and you push them into revolts.

Mercer: Was strenuous against giving Congress power to tax exports. Such taxes are impolitic, as encouraging the raising of articles not meant for exportation. The states had now a right where their situation permitted to tax both the imports and the exports of their uncommercial neighbours. It was enough for them to sacrifice one half of it. It had been said the southern states had most need of naval protection. The reverse was the case. Were it not for promoting the carrying trade of the northern states, the southern states could let the trade go into foreign bottoms, where it would not need our protection. Virginia, by taxing her tobacco, had given an advantage to that of Maryland.

Sherman: To examine and compare the states in relation to imports and exports will be opening a boundless field. He thought the matter had been adjusted, and that imports were to be subject, and exports not, to be taxed. He thought it wrong to tax exports, except it might be such articles as ought not to be exported. The complexity of the business in America would render an equal tax on exports impracticable. The oppression of the uncommercial states was guarded against by the power to regulate trade between the states. As to compelling foreigners, that might be done by regulating trade in general. The government would not be trusted with such a power. Objections are most likely to be excited by considera-

tions relating to taxes and money. A power to tax exports would shipwreck the whole.

Carroll: Was surprised that any objection should be made to an exception of exports from the power of taxation.

It was finally agreed that the question concerning exports should lie over for the place in which the exception stood in the report—Maryland alone voting against it.

Article VII, Section 1, clause first, was agreed to, Mr. Gerry alone answering no.

Article VII, Section 3, was taken up. The words "white and others" were struck out, *nem. con.*, as superfluous. Aug. 20

Ellsworth: Moved to require the first census to be taken within "three" instead of "six" years from the first meeting of the legislature.

On the question: Yeas 9 (New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina); nays 2 (South Carolina, Georgia).

King: Asked what was the precise meaning of *direct* taxation. No one answered.

Gerry: Moved to add to Article VII, Section 3, the following clause: "That from the first meeting of the legislature of the United States until a census shall be taken, all moneys for supplying the public treasury by direct taxation shall be raised from the several states according to the number of their representatives respectively in the first branch."

Langdon: This would bear unreasonably hard on New Hampshire, and he must be against it.

Carroll: Opposed it. The number of representatives did not admit of a proportion exact enough for a rule of taxation.

Article VII, Section 3, was then agreed to: Yeas 10; Delaware alone, no. Aug. 21

Article VI, Section 12, which had been postponed on August 15, was now called for by Mason, who wished to know how the proposed amendment, as to money bills, would be decided, before he agreed to any further points.

Gerry's motion of yesterday, "that previous to a census direct



taxation be proportioned on the states according to the number of representatives," was taken up. He observed that the principal acts of government would probably take place within that period; and it was but reasonable that the states should pay in proportion to their share in them.

Ellsworth: Thought such a rule unjust. There was a great difference between the number of representatives and the number of inhabitants, as a rule in this case. Even if the former were proportioned as nearly as possible to the latter, it would be a very inaccurate rule. A state might have one representative only, that had inhabitants enough for one and a half, or more, if fractions could be applied, and so forth. He proposed to amend the motion by adding the words, "subject to a final liquidation by the foregoing rule, when a census shall have been taken."

Madison: The last appointment of Congress, on which the number of representatives was founded, was conjectural and meant only as a temporary rule, till a census should be established.

Read: The requisitions of Congress had been accommodated to the impoverishment produced by the war; and to other local and temporary circumstances.

Williamson: Opposed Gerry's motion.

Langdon: Was not here when New Hampshire was allowed three members. It was more than her share; he did not wish for them.

Butler: Contended warmly for Mr. Gerry's motion, as founded in reason and equity.

Ellsworth's proviso to Mr. Gerry's motion was agreed to, *nem. con.*

King: Thought the power of taxation given to the legislature rendered the motion of Gerry altogether unnecessary.

On Mr. Gerry's motion, as amended: Yeas 2 (Massachusetts, South Carolina); nays 8 (New Hampshire, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, Georgia); divided 1 (North Carolina).

L. Martin: The power of taxation is most likely to be criticised

by the public. Direct taxation should not be used but in cases of absolute necessity; and then the states will be the best judges of the mode. He therefore moved the following addition to Article VII, Section 3: "and whenever the legislature of the United States shall find it necessary that revenue should be raised by direct taxation, having apportioned the same according to the above rule on the several states, requisitions shall be made of the respective states to pay into the continental treasury their respective quotas, within a time in the said requisitions specified; and in case of any of the states failing to comply with such requisitions, then, and then only to devise and pass acts directing the mode, and authorizing the collection of the same."

McHenry: Seconded the motion.

There was no debate; and on the question: Yeas 1 (New Jersey); nays 8 (New Hampshire, Connecticut, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia); divided 1 (Maryland).

Rutledge submitted the following report for the Committee of Detail: At the end of the first clause of the first section of the seventh article, add, "for payment of the debts and necessary expenses of the United States; provided that no law for raising any branch of revenue, except what may be specially appropriated for the payment of interest on debts or loans, shall continue in force for more than ——— years." Aug. 22

The first clause of Article VII, Section 1, being so amended as to read, "The legislature *shall* fulfil the engagements and discharge the debts of the United States; and shall have the power to lay and collect taxes, duties, imposts, and excises," was agreed to. Aug. 23

Butler: Expressed his dissatisfaction, lest it should compel payment as well to the blood-suckers who had speculated on the distresses of others as to those who had fought and bled for their country. He would be ready, he said, tomorrow to vote for a discrimination between those classes of people; and gave notice that he would move for a reconsideration.

*Sept. 4* Brearley, for the Committee on Unfinished Business, submitted the following recommendation: The first clause of Article VII, Section 1, to read as follows: "The legislature shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States."

This proposition was agreed to, *nem. con.*

*Sept. 12* **Conclusions in Convention.** They [Congress] shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States. Article I, Section 8, clause 2. Report of Committee on Style and Arrangement.

*Sept. 17* The provision recommended by the Committee on Style and Arrangement was incorporated in the completed Constitution on this day.

#### BORROWING POWERS

*Aug. 6* **Details in Convention.** The legislature of the United States shall have the power . . . to borrow money, and emit bills on the credit of the United States. Article VII, Section 1, clause 8, Committee of Detail.

*Aug. 16* G. Morris: Moved to strike out "and emit bills on the credit of the United States." If the United States had credit, such bills would be unnecessary; if they had not, unjust and useless.

Butler: Seconds the motion.

Madison: Will it not be sufficient to prohibit the making them a *tender*? This will remove the temptation to emit them with unjust views. And promissory notes, in that shape, may in some emergencies be best.

G. Morris: Striking out the words will leave room still for notes of a *responsible* minister, which will do all the good without the mischief. The moneyed interest will oppose the plan of government, if paper emissions be not prohibited.

Gorham: Was for striking out without inserting any prohibi-

tion. If the words stand, they may suggest and lead to the measure.

Mason: Had doubts on the subject. Congress, he thought, would not have the power, unless it were expressed. Though he had a mortal hatred to paper money, yet as he could not foresee all emergencies, he was unwilling to tie the hands of the legislature. He observed that the late war could not have been carried on had such a prohibition existed.

Gorham: The power, as far as it will be necessary, or safe, is involved in that of borrowing.

Mercer: Was a friend to paper money, though in the present state and temper of America, he should neither propose nor approve of such a measure. He was consequently opposed to a prohibition of it altogether. It will stamp suspicion on the government, to deny it a discretion on this point. It was impolitic, also, to excite the opposition of all those who were friends to paper money. The people of property would be sure to be on the side of the plan, and it was impolitic to purchase their further attachment with the loss of the opposite class of citizens.

Ellsworth: Thought this a favorable moment to shut and bar the door against paper money. The mischiefs of the various experiments which had been made were now fresh in the public mind, and had excited the disgust of all the respectable part of America. By withholding the power from the new government, more friends of influence would be gained to it than by almost anything else. Paper money can in no case be necessary. Give the government credit, and other resources will offer. The power may do harm, never good.

Randolph: Notwithstanding his antipathy to paper money, could not agree to strike out the words, as he could not foresee all the occasions that might arise.

Wilson: It will have a most salutary influence on the credit of the United States to remove the possibility of paper money. This expedient can never succeed whilst its mischiefs are remembered. And as long as it can be resorted to, it will be a bar to other resources.

Butler: Remarked that paper was a legal tender in no country in Europe. He was urgent for disarming the government of such a power.

Mason: Was still averse to tying the hands of the legislature *altogether*. If there was no example in Europe, as just remarked, it might be observed, on the other side, that there was none in which the government was restrained on this head.

Read: Thought the words, if not struck out, would be as alarming as the mark of the beast in Revelation.

Langdon: Had rather reject the whole plan than retain the three words "and emit bills."

On the motion for striking out: Yeas 9 (New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia); nays 2 (New Jersey, Maryland).

The clause for borrowing money was agreed to, *nem. con.*

Sept. 12 **Conclusions in Convention.** They [Congress] shall have power . . . to borrow money on the credit of the United States. Article I, Section 8, clause 3. Report of Committee on Style and Arrangement.

Sept. 17 The recommendation of the Committee on Style and Arrangement became Article I, Section 8, clause 2, of the completed Constitution.

#### JUDICIAL EXPLICATIONS

Collector v. Day, 11 Wall. 113 (1871)

Veazie Bank v. Fenno, 8 Wall. 533 (1869)

Juilliard v. Greenman, 110 U.S. 421 (1884)

Flint v. Stone Tracy Co., 220 U.S. 107 (1911)

Bailey v. Drexel Furniture Co., 259 U.S. 20 (1922)

Steward Machine Co. v. Davis, 300 U.S. — (1937)

Graves v. New York, 306 U.S. 486 (1939)

## COMMERCIAL POWERS

## POWER OVER INTERSTATE AND FOREIGN COMMERCE

- Details in Convention.** The legislature of the United States shall have the power . . . to regulate commerce with foreign nations, and among the several states. Article VII, Section 1, clause 2, Committee of Detail. *Aug. 6*
- Without discussion this clause was agreed to, *nem. con.* *Aug. 16*
- Madison submitted, in order to be referred to the Committee of Detail, the following, as proper to be added to powers of the general legislature: To regulate affairs with the Indians, as well within as without the limits of the United States. *Aug. 18*
- Rutledge, from the Committee of Detail, to whom were referred the propositions of Madison and C. Pinckney, made the report following: "The following addition should be made to the report now before the Convention: At the end of the second clause, second section, seventh article, add, 'and with Indians, within the limits of any state, not subject to the laws thereof.' " *Aug. 22*
- Article VII, Section 6, by the committee of eleven reported to be struck out (see the twenty-fourth inst.) being now taken up: *Aug. 29*
- C. Pinckney: Moved to postpone the report, in favor of the following proposition: "That no act of the legislature for the purpose of regulating the commerce of the United States with foreign powers, among the several states shall be passed without the assent of two-thirds of the members of each house." He remarked that there were five distinct commercial interests: (1) the fisheries and West India trade, which belonged to the New England states; (2) the interest of New York lay in a free trade; (3) wheat and flour the staples of the two Middle states (New Jersey and Pennsylvania); (4) tobacco, the staple of Maryland and Virginia, and partly of North Carolina; (5) rice and indigo, the staples of South Carolina and Georgia. These different interests would be a source of oppressive regulations, if no check to a bare majority should be provided. States pursue their interests with less scruple than individuals.

The power of regulating commerce was a pure concession on the part of the southern states. They did not need the protection of the northern states at present.

Martin: Seconded the motion.

C. C. Pinckney: Said it was the true interest of the southern states to have no regulation of commerce; but considering the loss brought on the commerce of the eastern states by the Revolution, their liberal conduct towards the views <sup>1</sup> of South Carolina, and the interest the weak southern states had in being united with the strong eastern states, he thought it proper that no fetters should be imposed on the power of making commercial regulations, and that his constituents, though prejudiced against the eastern states, would be reconciled to this liberality. He had himself, he said, prejudices against the eastern states before he came here, but would acknowledge that he had found them as liberal and candid as any men whatever.

Clymer: The diversity of commercial interests, of necessity, creates difficulties which ought not to be increased by unnecessary restrictions. The northern and middle states will be ruined, if not enabled to defend themselves against foreign regulations.

Sherman: Alluding to Mr. Pinckney's enumeration of particular interests, as requiring a security against abuse of the power, observed that the diversity was of itself a security; adding that to require more than a majority to decide a question was always embarrassing, as had been experienced in cases requiring the votes of nine states in Congress.

C. Pinckney: Replied that his enumeration meant the five minute interests. It still left the two great divisions, of northern and southern interests.

G. Morris: Opposed the object of the motion, as highly injuri-

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<sup>1</sup> He meant the permission to import slaves. An understanding on the two subjects of *navigation* and *slavery* had taken place between those parts of the Union, which explains the vote on the motion depending, as well as the language of General Pinckney and others.

ous. Preferences to American ships will multiply them till they can carry the southern produce cheaper than it is now carried. A navy was essential to security, particularly of the southern states; and can only be had by a navigation act encouraging American bottoms and seamen. In those points of view, then, alone, it is the interest of the southern states that navigation acts should be facilitated. Shipping, he said, was the worst and most precarious kind of property, and stood in need of public patronage.

Williamson: Was in favor of making two-thirds, instead of a majority, requisite, as more satisfactory to the southern people. No useful measure, he believed, had been lost in Congress for want of nine votes. As to the weakness of the southern states, he was not alarmed on that account. The sickliness of their climate for invaders would prevent their being made an object. He acknowledged that he did not think the motion requiring two-thirds necessary in itself; because if a majority of the northern states should push their regulations too far, the southern states would build ships for themselves; but he knew the southern people were apprehensive on this subject, and would be pleased with the precaution.

Spaight: Was against the motion. The southern states could at any time save themselves from oppression by building ships for their own use.

Butler: Differed from those who considered the rejection of the motion as no concession on the part of the southern states. He considered the interest of these and of the eastern states to be as different as the interests of Russia and Turkey. Being, notwithstanding, desirous of conciliating the affections of the eastern states, he should vote against requiring two-thirds instead of a majority.

Mason: If the government is to be lasting it must be founded in the confidence and affections of the people; and must be so constructed as to obtain these. The *majority* will be governed by their interests. The southern states are the *minority* in both houses. Is it to be expected that they will deliver them-



selves bound, hand and foot, to the eastern states, and enable them to exclaim, in the words of Cromwell, on a certain occasion—"the Lord hath delivered them into our hands"?

Wilson: Took notice of the several objections, and remarked that if every peculiar interest was to be secured, *unanimity* ought to be required. The majority, he said, would be no more governed by interest than the minority. It was surely better to let the latter be bound hand and foot than the former. Great inconveniences had, he contended, been experienced in Congress from the Article of Confederation requiring nine votes in certain cases.

Madison: Went into a pretty full view of the subject. He observed that the disadvantage to the southern states from a navigation act lay chiefly in a temporary rise of freight, attended, however, with an increase of southern as well as northern shipping—with the emigration of northern seamen and merchants to the southern states—and with a removal of the existing and injurious retaliations among the states on each other. The power of foreign nations to obstruct our retaliating measures on them, by a corrupt influence, would also be less, if a majority should be made competent, than if two-thirds of each house should be required to legislative acts in this case. An abuse of the power would be qualified with all these good effects. But he thought an abuse was rendered improbable by the provision of two branches—by the independence of the Senate—by the negative of the executive—by the interest of Connecticut and New Jersey, which were agricultural, not commercial states—by the interior interest, which was also agricultural in the most commercial states—and by the accession of western states, which would be altogether agricultural. He added that the southern states would derive an essential advantage in the general security afforded by the increase of our maritime strength. He stated the vulnerable situation of them all, and of Virginia in particular. The increase of the coasting trade, and of seamen, would also be favorable to the southern states by increasing the consumption of their

produce. If the wealth of the eastern should in a still greater proportion be augmented, that wealth would contribute the more to the public wants and be otherwise a national benefit.

Rutledge: Was against the motion of his colleague. It did not follow from a grant of the power to regulate trade that it would be abused. At the worst, a navigation act could bear hard a little while only on the southern states. As we are laying the foundation for a great empire, we ought to take a permanent view of the subject and not look at the present moment only. He reminded the House of the necessity of securing the West India trade to this country. That was the great object, and a navigation act was necessary for obtaining it.

Randolph: Said that there were features so odious in the Constitution, as it now stands, that he doubted whether he should be able to agree to it. A rejection of the motion would complete the deformity of the system. He took notice of the argument in favor of giving the power over trade to a majority, drawn from the opportunity foreign powers would have of obstructing retaliatory measures, if two-thirds were made requisite. He did not think there was weight in that consideration. The difference between a majority and two-thirds did not afford room for such an opportunity. Foreign influence would also be more likely to be exerted on the President, who could require three-fourths by his negative. He did not mean, however, to enter into the merits. What he had in view was merely to pave the way for a declaration, which he might be hereafter obliged to make, if an accumulation of obnoxious ingredients should take place, that he could not give his assent to the plan.

Gorham: If the government is to be so fettered as to be unable to relieve the eastern states, what motive can they have to join in it, and thereby tie their own hands from measures which they could otherwise take for themselves? The eastern states were not led to strengthen the Union by fear for their own safety. He deprecated the consequences of disunion; but if it should take place, it was the southern part of the continent

that had most reason to dread them. He urged the improbability of a combination against the interest of the southern states, the different situations of the northern and middle states being a security against it. It was, moreover, certain that foreign ships would never be altogether excluded, especially those of nations in treaty with us.

On the question to postpone, in order to take up C. Pinckney's motion: Yeas 4 (Maryland, Virginia, North Carolina, Georgia); nays 7 (New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, South Carolina).

- Sept. 4 Brearley, for the Committee on Unfinished Business, submitted the following recommendation: "At the end of the second clause of Article VII, Section 1, add, 'and with the Indian tribes.' "

This recommendation was agreed to, *nem. con.*

- Sept. 12 **Conclusions in Convention.** They [Congress] shall have power . . . to regulate commerce with foreign nations, among the several states, and with the Indian tribes. Article I, Section 8, clause 4. Report of Committee on Style and Arrangement.

- Sept. 15 Mason: Expressing his discontent at the power given to Congress by a bare majority to pass navigation acts, which he said would not only enhance the freight, a consequence he did not so much regard, but would enable a few rich merchants in Philadelphia, New York, and Boston to monopolize the staples of the southern states, and reduce their value perhaps 50 per cent, moved a further proviso, "that no law in the nature of a navigation act be passed before the year 1808, without the consent of two-thirds of each branch of the legislature."

On the motion: Yeas 3 (Maryland, Virginia, Georgia); nays 7 (New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, South Carolina); absent 1 (North Carolina).

- Sept. 17 The proposal of the Committee on Style and Arrangement as worded above became a part of the completed Constitution this day.

## POWER OVER WEIGHTS AND MEASURES

- Details in Convention.** The legislature of the United States shall have the power . . . to fix the standard of weights and measures. Article VII, Section 1, clause 6, Committee of Detail. *Aug. 6*
- This clause was agreed to, *nem. con.* *Aug. 16*
- Conclusions in Convention.** They [Congress] shall have power . . . to . . . fix the standard of weights and measures. Article I, Section 8, clause 6. Report of Committee on Style and Arrangement. *Sept. 12*
- The final draft of the Constitution, approved this day, included this provision in Article I, Section 8, clause 5. *Sept. 17*

## MONETARY POWERS

- Details in Convention.** The legislature of the United States shall have the power . . . to coin money; to regulate the value of foreign coin. Article VII, Section 1, clauses 4 and 5, Committee of Detail. *Aug. 6*
- These provisions were agreed to, *nem. con.* *Aug. 16*
- Conclusions in Convention.** They [Congress] shall have power . . . to coin money, regulate the value thereof, and of foreign coin . . . Article I, Section 8, clause 6. Report of Committee on Style and Arrangement. *Sept. 12*
- This recommendation entered the completed Constitution as Article I, Section 8, clause 5. *Sept. 17*

## POSTAL POWERS

- Details in Convention.** The legislature of the United States shall have the power . . . to establish post offices. Article VII, Section 1, clause 7, Committee of Detail. *Aug. 6*
- Gerry: Moved to add to the clause "To establish post offices," the words, "and post roads." *Aug. 16*
- Mercer: Seconded him.
- On the question: Yeas 6 (Massachusetts, Delaware, Maryland,

Virginia, South Carolina, Georgia); nays 5 (New Hampshire, Connecticut, New Jersey, Pennsylvania, North Carolina).

*Sept. 12*    **Conclusions in Convention.** They [Congress] shall have power . . . to establish post offices and post roads. Article I, Section 8, clause 8. Report of Committee on Style and Arrangement.

*Sept. 14*    Franklin: Moved to add, after the words, "post roads," Article I, Section 8, a power "to provide for cutting canals where deemed necessary."

Wilson: Seconded the motion.

Sherman: Objected. The expense in such cases will fall on the United States, and the benefit accrue to the places where the canals may be cut.

Wilson: Instead of being an expense to the United States, they may be made a source of revenue.

Madison: Suggested an enlargement of the motion into a power "to grant charters of incorporation where the interest of the United States might require, and the legislative provisions of individual states may be incompetent." His primary object was, however, to secure an easy communication between the states, which the free intercourse now to be opened seemed to call for. The political obstacles being removed, a removal of the natural ones as far as possible ought to follow.

Randolph: Seconded the proposition.

King: Thought the power unnecessary.

Wilson: It is necessary to prevent *a state* from obstructing the *general* welfare.

King: The states will be prejudiced and divided into parties by it. In Philadelphia and New York, it will be referred to the establishment of a bank, which has been a subject of contention in those cities. In other places it will be referred to mercantile monopolies.

Wilson: Mentioned the importance of facilitating by canals the communication with the western settlements. As to banks, he did not think with Mr. King, that the power in that point of view would excite the prejudices and parties apprehended.

As to mercantile monopolies, they are already included in the power to regulate trade.

Mason: Was for limiting the power to the single case of canals.

He was afraid of monopolies of every sort, which he did not think were by any means already implied by the Constitution, as supposed by Mr. Wilson.

The motion being so modified as to admit a distinct question specifying and limited to the case of canals: Yeas 3 (Pennsylvania, Virginia, Georgia); nays 8 (New Hampshire, Massachusetts, Connecticut, New Jersey, Delaware, Maryland, North Carolina, South Carolina).

The other part fell of course, as including the power rejected.

The provision recommended by the Committee on Style and Arrangement is included in the completed Constitution as Article I, Section 8, clause 7. Sept. 17

#### POWER OVER BANKRUPTCY

Details in Convention. C. Pinckney: Moved to commit Article XVI, with the following proposition: "To establish uniform laws upon the subject of bankruptcies, and respecting the damages arising on the protest of foreign bills of exchange." Aug. 29

Gorham: Was for agreeing to the article, and committing the proposition.

Madison: Was for committing both. He wished the legislature might be authorized to provide for the *execution* of judgments in other states, under such regulations as might be expedient. He thought that this might be safely done, and was justified by the nature of the Union.

Randolph: Said there was no instance of one nation executing judgments of the courts of another nation. He moved the following proposition: "Whenever the act of any state, whether legislative, executive, or judiciary, shall be attested and exemplified under the seal thereof, such attestation and exemplification shall be deemed in other states as full proof of the existence of that act; and its operation shall be binding

in every other state, in all cases to which it may relate, and which are within the cognizance and jurisdiction of the state wherein the said act was done."

On the question for committing Article XVI, with C. Pinckney's motion: Yeas 9 (Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia); nays 2 (New Hampshire, Massachusetts).

The motion of Randolph was also committed, *nem. con.*

- Sept. 1* Rutledge, for the Committee of Detail, recommended that the following additions be made to the report, viz.: After the words "to establish an uniform rule of naturalization throughout the United States," add "to establish uniform laws on the subject of bankruptcies."
- Sept. 3* Sherman: Observed that bankruptcies were in some cases punishable with death, by the laws of England, and he did not choose to grant a power by which that might be done here.  
G. Morris: Said this was an extensive and delicate subject. He would agree to it because he saw no danger of abuse of the power by the legislature of the United States.  
On the question to agree to the clause, Connecticut alone was in the negative.
- Sept. 12* **Conclusions in Convention.** They [Congress] shall have power . . . to establish . . . uniform laws on the subject of bankruptcies throughout the United States. Article I, Section 8, clause 5. Report of Committee on Style and Arrangement.
- Sept. 17* The provision of the committee concerning bankruptcies became Article I, Section 8, clause 4, of the completed Constitution.

#### JUDICIAL EXPLICATIONS

Gibbons v. Ogden, 9 Wheat. 1 (1824)  
Brown v. Maryland, 12 Wheat. 419 (1827)  
Cooley v. Board of Wardens, 12 How. 299 (1852)  
The Daniel Ball, 10 Wall. 557 (1871)

Pensacola Telegraph Co. v. Western Union Telegraph Co.,  
96 U.S. 1 (1878)

International Text-Book Co. v. Pigg, 217 U.S. 91 (1910)

Second Employers' Liability Cases, 223 U.S. 1 (1912)

Railroad Commission of Wisconsin v. C. B. and Q. Railway  
Co., 257 U.S. 563 (1922)

Pennsylvania v. West Virginia, 262 U.S. 553 (1923)

Interstate Transit Co. v. Lindsey, 283 U.S. 183 (1931)

Kentucky Whip and Collar Co. v. I. C. R. R., 299 U.S. 334  
(1937)

National Labor Relations Board v. Jones and Laughlin Steel  
Corporation, 300 U.S. (1937)

Massachusetts State Grange v. Benton, 272 U.S. 525 (1926)

Lewis Publishing Co. v. Morgan, 229 U.S. 288 (1913)

Hanover National Bank v. Moyses, 186 U.S. 181 (1902)

### MILITARY POWERS

#### POWER TO DECLARE WAR

Details in Convention. The legislature of the United States shall *Aug. 6*  
have the power . . . to make war. Article VII, Section 1,  
clause 14, Committee of Detail.

C. Pinckney: Opposed the vesting this power in the legislature. *Aug. 17*  
Its proceedings were too slow. It would meet but once a year.  
The House of Representatives would be too numerous for  
such deliberations. The Senate would be the best depository,  
being more acquainted with foreign affairs, and most capable  
of proper resolutions. If the states are equally represented in  
the Senate, so as to give no advantage to the large states, the  
power will, notwithstanding, be safe, as the small have their  
all at stake in such cases as well as the large states. It would  
be singular for one authority to make war, and another peace.

Butler: The objections against the legislature lie in a great de-  
gree against the Senate. He was for vesting the power in the  
President, who will have all the requisite qualities, and will  
not make war but when the nation will support it.

Madison and Gerry: Moved to insert "*declare*," striking out



"*make*" war, leaving to the executive the power to repel sudden attacks.

Sherman: Thought it stood very well. The executive should be able to repel, and not to commence, war. "Make" is better than "declare," the latter narrowing the power too much.

Gerry: Never expected to hear, in a republic, a motion to empower the executive alone to declare war.

Ellsworth: There is a material difference between the cases of making *war* and making *peace*. It should be more easy to get out of war than into it. War also is a simple and overt declaration, peace attended with intricate and secret negotiations.

Mason: Was against giving the power of war to the executive, because not safely to be trusted with it, or to the Senate, because not so constructed as to be entitled to it. He was for clogging rather than facilitating war; but for facilitating peace. He preferred "*declare*" to "*make*."

On the motion to insert "*declare*" in place of "*make*," it was agreed to: Yeas 8 (Connecticut, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia); nays 1 (New Hampshire); absent 1 (Massachusetts).

C. Pinckney's motion to strike out the whole clause was disagreed to, without call of states.

Butler: Moved to give the legislature the power of peace, as they were to have that of war.

Gerry: Seconds him. Eight senators may possibly exercise the power, if vested in that body; and fourteen, if all should be present; and may consequently give up part of the United States. The Senate are more liable to be corrupted by an enemy than the whole legislature.

On the motion for adding "and peace" after "war," it was unanimously negatived.

Aug. 18

The following, as moved by C. Pinckney, was referred to the Committee of Detail: "To grant letters of marque and reprisal."

Gerry: Remarked that some provision ought to be made in favor of public securities, and something inserted concerning letters of marque, which he thought not included in the power of

war. He proposed that these subjects should also go to a committee.

Gerry's motion to provide for public securities, for stages on post roads, and for letters of marque and reprisal, was committed, *nem. con.*

Brearley, for the Committee on Unfinished Business, submitted the following report: To add to the clause "to declare war," the words "and grant letters of marque and reprisal." *Sept. 5*

This recommendation was agreed to, *nem. con.*

Conclusions in Convention. They [Congress] shall have power . . . to declare war, grant letters of marque and reprisal, . . . Article I, Section 8, clause 12. Report of Committee on Style and Arrangement. *Sept. 12*

This provision of the committee is included in the completed Constitution as Article I, Section 8, clause 11. *Sept. 17*

#### POWER TO RAISE AND SUPPORT ARMIES

Details in Convention. The legislature of the United States shall have the power . . . to raise armies. Article VII, Section 1, clause 15, Committee of Detail. *Aug. 6*

Gorham: Moved to add "and support" after "raise." *Aug. 18*  
This was agreed to, *nem. con.*; and then the clause was agreed to, *nem. con.*, as amended.

Gerry: Took notice that there was no check here against standing armies in time of peace. The existing Congress is so constructed that it cannot of itself maintain an army. This would not be the case under the new system. The people were jealous on this head, and great opposition to the plan would spring from such an omission. He suspected that preparations of force were now making against it. (He seemed to allude to the activity of the governor of New York at this crisis in disciplining the militia of that state.) He thought an army dangerous in time of peace, and could never consent to a power to keep up an indefinite number. He proposed that there should not be kept up in time of peace more than ——— thousand

troops. His idea was that the blank should be filled with two or three thousand.

L. Martin and Gerry: Now regularly moved "provided that in time of peace the army shall not consist of more than ——— thousand men."

C. C. Pinckney: Asked whether no troops were ever to be raised until an attack should be made on us?

Gerry: If there be no restriction, a few states may establish a military government.

Williamson: Reminded him of Mr. Mason's motion for limiting the appropriation of revenue as the best guard in this case.

Langdon: Saw no room for Mr. Gerry's distrust of the representatives of the people.

Dayton: Preparations for war are generally made in time of peace, and a standing force of some sort may, for ought we know, become unavoidable. He should object to no restrictions consistent with these ideas.

The motion of L. Martin and Gerry was disagreed to, *nem. con.*

*Sept. 12*    **Conclusions in Convention.** They [Congress] shall have power . . . to raise and support armies: . . . Article I, Section 8, clause 13. Report of Committee on Style and Arrangement.

*Sept. 17*    This recommendation of the committee became Article I, Section 8, clause 12, of the completed Constitution.

#### POWER TO PROVIDE AND MAINTAIN A NAVY

*Aug. 6*    **Details in Convention.** The legislature of the United States shall have the power . . . to build and equip fleets. Article VII, Section 1, clause 16, Committee of Detail.

*Aug. 18*    Instead of "to build and equip fleets," "to provide and maintain a navy" was agreed to, *nem. con.*, as a more convenient definition of the power.

*Sept. 12*    **Conclusions in Convention.** They [Congress] shall have power . . . to provide and maintain a navy. Article I, Section 8, clause 14. Report of Committee on Style and Arrangement.

The recommendation of the committee was included in the final draft of the Constitution as Article I, Section 8, clause 13. *Sept. 17*

## POWER OVER STATE MILITIA

**Details in Convention.** The legislature of the United States shall have the power . . . to call forth the aid of the militia, in order to execute the laws of the Union, enforce treaties, suppress insurrections, and repel invasions. Article VII, Section 1, clause 17, Committee of Detail. *Aug. 6*

**Mason:** Introduced the subject of regulating the militia. He thought such a power necessary to be given to the general government. He hoped there would be no standing army in time of peace, unless it might be for a few garrisons. The militia ought, therefore, to be more effectually prepared for the public defense. Thirteen states will never concur in any one system if the disciplining of the militia be left in their hands. If they will not give up the power over the whole, they probably will over a part as a select militia. He moved, as an addition to the propositions just referred to the Committee of Detail, and to be referred in like manner, "a power to regulate the militia." *Aug. 18*

**Mason:** Moved, as an additional power, "to make laws for the regulation and discipline of the militia of the several states, reserving to the states the appointment of the officers." He considered uniformity as necessary in the regulation of the militia, throughout the Union.

**C. C. Pinckney:** Mentioned a case during the war in which a dissimilarity in the militia of different states had produced the most serious mischiefs. Uniformity was essential. The states would never keep up a proper discipline of the militia.

**Ellsworth:** Was for going as far, in submitting the militia to the general government, as might be necessary; but thought the mention of Mr. Mason went too far. He moved, "that the militia should have the same arms and exercise, and be under rules established by the general government when in actual

service of the United States; and when states neglect to provide regulations for militia, it should be regulated and established by the legislature of the United States." The whole authority over the militia ought by no means to be taken away from the states, whose consequence would pine away to nothing after such a sacrifice of power. He thought the general authority could not sufficiently pervade the Union for such a purpose, nor could it accommodate itself to the local genius of the people. It must be vain to ask the states to give the militia out of their hands.

Sherman: Seconds the motion.

Dickinson: We are come now to a most important matter—that of the sword. His opinion was that the states never would nor ought to give up all authority over the militia. He proposed to restrain the general power to one-fourth part at a time, which by rotation would discipline the whole militia.

Butler: Urged the necessity of submitting the whole militia to the general authority, which had the care of the general defense.

Mason: Had suggested the idea of a select militia. He was led to think that would be, in fact, as much as the general government could advantageously be charged with. He was afraid of creating insuperable objections to the plan. He withdrew his original motion, and moved a power to make laws for regulating and disciplining the militia, not exceeding one-tenth part in any one year, and reserving the appointment of officers to the states.

C. C. Pinckney: Renewed Mr. Mason's original motion. For a part to be under the general and a part under the state governments would be an incurable evil. He saw no room for such distrust of the general government.

Langdon: Seconds General Pinckney's renewal. He saw no more reason to be afraid of the general government than of the state governments. He was more appreciative of the confusion of the different authorities on this subject than of either.

Madison: Thought the regulation of the militia naturally appertaining to the authority charged with the public defense.

It did not seem, in its nature, to be divisible between two distinct authorities. If the states would trust the general government with a power over the public treasury, they would, from the same consideration of necessity, grant it the direction of the public force. Those who had a full view of the public situation would, from a sense of the danger, guard against it. The states would not be separately impressed with the general situation, nor have the due confidence in the concurrent exertions of each other.

Ellsworth: Considered the idea of a select militia as impracticable; and if it were not, it would be followed by a ruinous declension of the great body of the militia. The states would never submit to the same militia laws. Three or four shillings as a penalty will enforce obedience better in New England than forty lashes in some other places.

C. Pinckney: Thought the power such an one as could not be abused, and that the states would see the necessity of surrendering it. He had, however, but a scanty faith in militia. There must be also a real military force. This alone can effectually answer the purpose. The United States had been making an experiment without it, and we see the consequence in their rapid approaches toward anarchy.

Sherman: Took notice that the states might want their militia for defense against invasions and insurrections, and for enforcing obedience to their laws. They will not give up this point. In giving up that of taxation, they retain a concurrent power of raising money for their own use.

Gerry: Thought this the last point remaining to be surrendered. If it be agreed to by the Convention, the plan will have as black a mark as was set on Cain. He had no such confidence in the general government as some gentlemen possessed, and believed it would be found that the states have not.

Mason: Thought there was great weight in the remarks of Mr. Sherman, and moved an exception to his motion "of such part of the militia as might be required by the states for their own use."

Read: Doubted the propriety of leaving the appointment of the

militia officers to the states. In some states they are elected by the legislatures; in others by the people themselves. He thought at least an appointment by the state executives ought to be insisted on.

A grand committee was appointed this day, consisting of Langdon, King, Sherman, Livingston, Clymer, Dickinson, McHenry, Mason, Williamson, C. C. Pinckney, and Baldwin.

On the question for committing to the grand committee the latter motion of Mason and the original one revived by C. C. Pinckney: Yeas 8 (New Hampshire, Massachusetts, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia); nays 2 (Connecticut, New Jersey); divided 1 (Maryland).

*Aug. 21* Livingston, for the grand committee, submitted the following report: The legislature of the United States shall have power . . . to make laws for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States; reserving to the states, respectively, the appointment of the officers, and the authority of training the militia, according to the discipline prescribed by the United States.

*Aug. 23* The following clause being under consideration: "To make laws for organizing, arming and disciplining the militia, and for governing such parts of them as may be employed in the service of the United States; reserving to the states, respectively, the appointment of the officers, and authority of training the militia according to the discipline prescribed."

Sherman: Moved to strike out the last member "and authority of training, etc." He thought it unnecessary. The states will have this authority of course, if not given up.

Ellsworth: Doubted the propriety of striking out the sentence. The reason assigned applies as well to the other reservation of the appointment to offices. He remarked at the same time that the term discipline was of vast extent, and might be so expounded as to include all power on the subject.

King: By way of explanation said that by "organizing," the com-

mittee meant proportioning the officers and men—by “arming,” specifying the kind, size and caliber of arms—and by “disciplining,” prescribing the manual exercise, evolutions, etc.

Sherman: Withdrew his motion.

Gerry: This power in the United States, as explained, is making the states drill sergeants. He had as lief let the citizens of Massachusetts be disarmed as to take the command from the states and subject them to the general legislature. It would be regarded as a system of despotism.

Madison: Observed that “arming,” as explained, did not extend to furnishing arms; nor the term “disciplining” to penalties, and courts martial for enforcing them.

King: Added to his former explanation that “arming” meant not only to provide for uniformity of arms, but included the authority to regulate the modes of furnishing, either by the militia themselves, the state governments, or the national treasury; that *laws* for disciplining must involve penalties, and everything necessary for enforcing penalties.

Dayton: Moved to postpone the paragraph in order to take up the proposition: “To establish an uniform and general system of discipline for the militia of these states, and to make laws for organizing, arming, disciplining and governing *such part of them as may be employed in the service of the United States*; reserving to the states, respectively, the appointment of the officers, and all authority over the militia not herein given to the general government.”

On the question to postpone, in favor of this proposition, it passed in the negative: Yeas 3 (New Jersey, Maryland, Georgia); nays 8 (New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina).

Ellsworth and Sherman: Moved to postpone the second clause, in favor of the following: “To establish an uniformity of arms, exercise and organization for the militia, and to provide for the government of them when called into the service of the United States.”



The object of this proposition was to refer the plan for the militia to the general government, but to leave the execution of it to the state governments.

Langdon: Said he could not understand the jealousy expressed by some gentlemen. The general and state governments were not enemies to each other, but different institutions for the good of the people of America. As one of the people, he could say, the national government is mine, the state government is mine. In transferring power from one to the other, I only take out of my left hand what it cannot so well use and put it into my right hand where it can be better used.

Gerry: Thought it was rather taking out of the right hand and putting it into the left. Will any man say that liberty will be as safe in the hands of eighty or an hundred men taken from the whole continent as in the hands of two or three hundred taken from a single state?

Dayton: Was against so absolute a uniformity. In some states there ought to be a greater proportion of cavalry than in others. In some places rifles would be most proper, in others muskets, etc.

C. C. Pinckney: Preferred the clause reported by the committee, extending the meaning of it to the case of fines, etc.

Madison: The primary object is to secure an effectual discipline of the militia. This will no more be done if left to the states separately than the requisitions have been hitherto paid by them. The states neglect their militia now, and the more they are consolidated into one nation, the less each will rely on its own interior provisions for its safety, and the less prepare its militia for that purpose; in like manner as the militia of a state would have been still more neglected than it has been, if each county had been independently charged with the care of its militia. The discipline of the militia is evidently a *national* concern, and ought to be provided for in the *national* Constitution.

L. Martin: Was confident that the states would never give up the power over the militia; and that, if they were to do so,

the militia would be less attended to by the general than by the state governments.

Randolph: Asked what danger there could be, that the militia could be brought into the field, and made to commit suicide on themselves. This is a power that cannot, from its nature, be abused; unless, indeed, the whole mass should be corrupted. He was for trammeling the general government whenever there was danger, but here there could be none. He urged this as an essential point; observing that the militia were everywhere neglected by the state legislatures, the members of which courted popularity too much to enforce a proper discipline. Leaving the appointment of officers to the states protects the people against every apprehension that could produce murmur.

On the question on Ellsworth's motion: Yeas 1 (Connecticut); the other ten states, no.

A motion was then made to recommit the second clause; which was negatived.

On the question to agree to the first part of the clause, namely, "To make laws for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States": Yeas 9 (New Hampshire, Massachusetts, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia); nays 2 (Connecticut, Maryland).

Madison: Moved to amend the next part of the clause so as to read, "reserving to the states, respectively, the appointment of the officers, *under the rank of general officers.*"

Sherman: Considered this as absolutely inadmissible. He said that if the people should be so far asleep as to allow the most influential officers of the militia to be appointed by the general government, every man of discernment would rouse them by sounding the alarm to them.

Gerry: Let us at once destroy the state governments, have an executive for life or hereditary, and a proper Senate; and then there would be some consistency in giving full powers to the

general government: but as the states are not to be abolished, he wondered at the attempts that were made to give powers inconsistent with their existence. He warned the Convention against pushing the experiment too far. Some people will support a plan of vigorous government at every risk. Others, of a more democratic cast, will oppose it with equal determination; and a civil war may be produced by the conflict.

Madison: As the greatest danger is that of disunion of the states, it is necessary to guard against it by sufficient powers to the common government; and as the greatest danger to liberty is from large standing armies, it is best to prevent them by an effectual provision for a good militia.

On the question to agree to Madison's motion: Yeas 3 (New Hampshire, South Carolina, Georgia); nays 8 (Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina).

On the question to agree to the "reserving to the states the appointment of the officers," it was agreed to, *nem. con.*

On the question on the clause, "and the authority of training the militia according to the discipline prescribed by the United States": Yeas 7 (New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Maryland, North Carolina); nays 4 (Delaware, Virginia, South Carolina, Georgia).

Article IX, being waived, and Article VII, Section 1, being resumed:

G. Morris: Moved to strike the following words out of the eighteenth clause, "enforce treaties," as being superfluous, since treaties were to be "laws," which was agreed to, *nem. con.*

G. Morris: Moved to alter the first part of the eighteenth clause so as to read, "to provide for calling forth the militia, to execute the laws of the Union, suppress insurrections, and repel invasions," which was agreed to, *nem. con.*

On the question then to agree to the eighteenth clause of Article VII, Section 1, as amended, it passed in the affirmative, *nem. con.*

Sept. 12    **Conclusions in Convention.** They [Congress] shall have power . . . to provide for calling forth the militia, to execute the

laws of the Union, suppress insurrections, and repel invasions. Article I, Section 8, clause 16. Report of Committee on Style and Arrangement.

They [Congress] shall have power . . . to provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States; reserving to the states, respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress. Article I, Section 8, clause 17. Report of Committee on Style and Arrangement.

Mason: Being sensible that an absolute prohibition of standing armies in time of peace might be unsafe, and wishing at the same time to insert something pointing out and guarding against the danger of them, moved to preface the clause (Article I, Section 8), "to provide for organizing, arming and disciplining the militia, etc.," with the words, "and that the liberties of the people may be better secured against the danger of standing armies in time of peace." *Sept. 14*

Randolph: Seconded the motion.

Madison: Was in favor of it. It did not restrain Congress from establishing a military force in time of peace, if found necessary; and as armies in time of peace are allowed on all hands to be an evil, it is well to discountenance them by the Constitution, as far as will consist with the essential power of the government on that head.

G. Morris: Opposed the motion, as setting a dishonorable mark of distinction on the military class of citizens.

C. Pinckney and Bedford: Concurred in the opposition.

On the question: Yeas 2 (Virginia, Georgia); nays 9 (New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, North Carolina, South Carolina).

These clauses are included in the completed Constitution as Article I, Section 8, clauses 15 and 16. *Sept. 17*

## POWER OVER GOVERNMENT OF LAND AND NAVAL FORCES

- Aug. 18*    **Details in Convention.** A clause, "to make rules for the government and regulation of the land and naval forces," was added from the existing Articles of Confederation.
- Sept. 12*    **Conclusions in Convention.** They [Congress] shall have power . . . to make rules for the government and regulation of the land and naval forces. Article I, Section 8, clause 15. Report of Committee on Style and Arrangement.
- Sept. 17*    The final draft of the Constitution, approved this day, included the committee's recommendation.

## POWER OVER CAPTURES ON LAND AND WATER

- Aug. 6*    **Details in Convention.** The legislature of the United States shall have the power . . . to make rules concerning captures on land and water. . . . Article VII, Section 1, clause 11, Committee of Detail.
- Aug. 17*    The eleventh clause, "to make rules as to captures on land and water," was agreed to, *nem. con.*
- Sept. 12*    **Conclusions in Convention.** They [Congress] shall have power . . . to . . . make rules concerning captures on land and water. Article I, Section 8, clause 12. Report of Committee on Style and Arrangement.
- Sept. 17*    The final draft of the Constitution, approved this day, included the above recommendation.

## JUDICIAL EXPLICATIONS

- Ex parte Milligan, 4 Wall. 2 (1866)  
 United States v. Gettysburg Electric Railroad Co., 160 U.S. 668 (1896)  
 Selective Draft Cases, 245 U.S. 366 (1918)  
 Schenck v. United States, 249 U.S. 47 (1919).

## MISCELLANEOUS POWERS

## POWER TO CREATE INFERIOR TRIBUNALS

**Preliminaries in Committee of the Whole.** Dickinson: Contended strongly that if there was to be a national legislature, there ought to be a national judiciary, and that the former ought to have authority to institute the latter. *June 5*

Wilson and Madison: Then moved, in pursuance of the idea expressed above by Mr. Dickinson, to add to the ninth resolution the words following: "that the national legislature be empowered to institute inferior tribunals." They observed that there was a distinction between establishing such tribunals absolutely and giving a discretion to the legislature to establish or not to establish them. They repeated the necessity of some such provision.

Butler: The people will not bear such innovations. The states will revolt at such encroachments. Supposing such an establishment to be useful, we must not venture on it. We must follow the example of Solon, who gave the Athenians not the best government he could devise, but the best they would receive.

King: Remarked, as to the comparative expense, that the establishment of inferior tribunals would cost infinitely less than the appeals that would be prevented by them.

On this question, as moved by Wilson and Madison: Yeas 8 (Massachusetts, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Georgia); nays 2 (Connecticut, South Carolina); divided 1 (New York).

**Fundamentals in Convention.** Resolved, that the national legislature be empowered to appoint inferior tribunals. Twelfth resolution, Committee of the Whole. *June 19*

The above resolution was agreed to, *nem. con.* *July 18*

**Agreement Referred to Committee of Detail.** Resolved, that the national legislature be empowered to appoint inferior tribunals. Fifteenth resolution on fundamentals. *July 26*

**Details in Convention.** The legislature of the United States shall have the power . . . to constitute tribunals inferior to the *Aug. 6*

Supreme Court. Article VII, Section 1, clause 10, Committee of Detail.

- Aug. 17* This recommendation of the committee was agreed to, *nem. con.*
- Sept. 12* **Conclusions in Convention.** They [Congress] shall have power . . . to constitute tribunals inferior to the Supreme Court. Article I, Section 8, clause 10. Report of Committee on Style and Arrangement.
- Sept. 17* The completed Constitution contains the committee's provision as Article I, Section 8, clause 9.

#### POWER OVER APPOINTMENT OF INFERIOR OFFICERS

- Sept. 15* **Conclusions in Convention.** To the power of appointment recommended by the Committee on Style and Arrangement in Article II, Section 2, paragraph 2, of their report, G. Morris moved the following addition: "But the Congress may by law vest the appointment of such inferior officers as they think proper in the President alone, in the courts of law, or in the heads of departments."

Sherman: Seconded the motion.

Madison: It does not go far enough, if it be necessary at all. Superior officers below heads of departments ought in some cases to have the appointment of the lesser offices.

G. Morris: There is no necessity. Blank commissions can be sent. On the motion: Yeas 5 (New Hampshire, Connecticut, New Jersey, Pennsylvania, North Carolina); nays 5 (Massachusetts, Delaware, Virginia, South Carolina, Georgia); divided 1 (Maryland).

The motion being lost, by an equal division of votes, it was urged that it be put a second time, some such provision being too necessary to be omitted; and on a second question, it was agreed to, *nem. con.*

- Sept. 17* This provision was included in the completed Constitution as a part of Article II, Section 2, of the final draft.

## POWER TO PROVIDE FOR NATURALIZATION OF ALIENS

- Details in Convention.** The legislature of the United States shall have the power . . . to establish an uniform rule of naturalization throughout the United States. Article VII, Section 1, clause 3, Committee of Detail. *Aug. 6*
- Conclusions in Convention.** They [Congress] shall have power . . . to establish an uniform rule of naturalization . . . throughout the United States. Article I, Section 8, clause 5. Report of Committee on Style and Arrangement. *Sept. 12*
- The provision of the committee relative to naturalization became a part of Article I, Section 8, clause 4, of the completed Constitution. *Sept. 17*

## POWER TO GRANT PATENTS AND COPYRIGHTS

- Details in Convention.** Madison submitted, in order to be referred to the Committee of Detail, the following, as proper to be added to the powers of the general legislature: "To secure to literary authors their copyrights for a limited time." Also referred, as moved by C. Pinckney: "To grant patents for useful inventions." "To secure to authors exclusive rights for a certain time." *Aug. 18*
- Brearley, for the Committee on Unfinished Business, submitted the following recommendation: "To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries." *Sept. 5*
- This clause was agreed to, *nem. con.*
- Conclusions in Convention.** They [Congress] shall have power . . . to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries. Article I, Section 8, clause 9. Report of Committee on Style and Arrangement. *Sept. 12*



Sept. 17 This provision was included in the completed Constitution as Article I, Section 8, clause 8.

#### POWER OVER SPECIFIED CRIMES

Aug. 6 **Details in Convention.** The legislature of the United States shall have the power . . . to declare the law and punishment of piracies and felonies committed on the high seas, and the punishment of counterfeiting the coin of the United States, and of offenses against the law of nations. Article VII, Section 1, clause 12, Committee of Detail.

The legislature of the United States shall have the power to declare the punishment of treason. Article VII, Section 2, sentence 2, Committee of Detail.

Aug. 17 The clause, "to declare the law and punishment of piracies and felonies, etc.," being considered:

Madison: Moved to strike out "and punishment, etc." after the words "to declare the law."

Mason: Doubts the safety of it, considering the strict rule of construction in criminal cases. He doubted also the propriety of taking the power in all these cases, wholly from the states.

G. Morris: Thought it would be necessary to extend the authority further, so as to provide for the punishment of counterfeiting in general. Bills of exchange, for example, might be forged in one state and carried into another.

It was suggested by some other member that *foreign* paper might be counterfeited by citizens; and that it might be politic to provide by national authority for the punishment of it.

Randolph: Did not conceive that expunging "the punishment" would be a constructive exclusion of the power. He doubted only the efficacy of the word "declare."

Wilson: Was in favor of the motion. Strictness was not necessary in giving authority to enact penal laws though necessary in enacting and expounding them.

On the question for striking out "and punishment" as moved by Madison: Yeas 7 (Massachusetts, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia); nays 3 (New Hampshire, Connecticut, Maryland).

G. Morris: Moved to strike out "declare the law" and insert "punish" before "piracies."

On the question: Yeas 7 (New Hampshire, Massachusetts, Pennsylvania, Delaware, Maryland, South Carolina, Georgia); nays 3 (Connecticut, Virginia, North Carolina).

Madison and Randolph: Moved to insert "define and" before "punish."

Wilson: Thought "felonies" sufficiently defined by common law.

Dickinson: Concurred with Mr. Wilson.

Mercer: Was in favor of the amendment.

Madison: Felony at common law is vague. It is also defective.

One defect is supplied by Statute of Anne as to running away with vessels, which at common law was a breach of trust only. Besides, no foreign law should be a standard, further than it is expressly adopted. If the laws of the states were to prevail on this subject, the citizens of different states would be subject to different punishments for the same offense at sea. There would be neither uniformity nor stability in the law. The proper remedy for all these difficulties was to vest the power proposed by the term "define" in the national legislature.

G. Morris: Would prefer "designate" to "define," the latter being, as he conceived, limited to the pre-existing meaning.

It was said by others to be applicable to the creating of offenses also, and therefore suited the case both of felonies and piracies.

The motion of Madison and Randolph was agreed to.

Ellsworth: Enlarged the motion so as to read, "to define and punish piracies and felonies committed on the high seas, counterfeiting the securities and current coin of the United States, and offenses against the law of nations," which was agreed to, *nem. con.*

**Conclusions in Convention.** They [Congress] shall have power . . . to provide for the punishment of counterfeiting the securities and current coin of the United States. Article I, Section 8, clause 7. Report of Committee on Style and Arrangement.

*Sept. 12*

They [Congress] shall have power . . . to define and punish piracies and felonies committed on the high seas, and punish

offenses against the law of nations. Article I, Section 8, clause 11. Report of Committee on Style and Arrangement.

The Congress shall have power to declare the punishment of treason. . . . Article III, Section 3, paragraph 2. Report of Committee on Style and Arrangement.

*Sept. 14* On the clause "to define and punish piracies and felonies on the high seas, and punish offenses against the law of nations":

G. Morris: Moved to strike out "punish" before the words, "offenses against the law of nations," so as to let these be *definable*, as well as punishable, by virtue of the preceding member of the sentence.

Wilson: Hoped the alteration would by no means be made. To pretend to *define* the law of nations, which depended on the authority of all the civilized nations of the world, would have a look of arrogance that would make us ridiculous.

G. Morris: The word "define" is proper when applied to *offenses* in this case; the law of nations being often too vague and deficient to be a rule.

On the question to strike out the word "punish," it passed in the affirmative: Yeas 6 (New Hampshire, Connecticut, New Jersey, Delaware, North Carolina, South Carolina); nays 5 (Massachusetts, Pennsylvania, Maryland, Virginia, Georgia).

*Sept. 17* The following provisions on these subjects, approved this day, were included in the completed Constitution:

The Congress shall have power . . . To provide for the punishment of counterfeiting the securities and current coin of the United States.

To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations. Article I, Section 8, clauses 6 and 10.

The Congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted. Article III, Section 3, paragraph 2.

## DEFEATED PROPOSAL

Madison and C. Pinckney: Then moved to insert, in the list of powers vested in Congress, a power "to establish an university, in which no preferences or distinctions should be allowed on account of religion." *Sept. 14*

Wilson: Supported the motion.

G. Morris: It is not necessary. The exclusive power at the seat of government will reach the object.

On the question: Yeas 4 (Pennsylvania, Virginia, North Carolina, South Carolina); nays 6 (New Hampshire, Massachusetts, New Jersey, Delaware, Maryland, Georgia); divided 1 (Connecticut).

## IMPLIED POWERS

**Details in Convention.** The legislature of the United States shall have the power . . . to make all laws that shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or office thereof. Article VII, Section 1, clause 18, Committee of Detail. *Aug. 6*

Madison and C. Pinckney: Moved to insert, between "laws" and "necessary," "and establish all offices"; it appearing to them liable to cavil that the latter was not included in the former. *Aug. 20*

G. Morris, Wilson, Rutledge, and Ellsworth: Urged that the amendment could not be necessary.

On the motion for inserting "and establish all offices": Yeas 2 (Massachusetts, Maryland); nays 9 (New Hampshire, Connecticut, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia).

The clause as reported was then agreed to, *nem. con.*

**Conclusions in Convention.** They [Congress] shall have power . . . to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof. Article *Sept. 12*

I, Section 8, clause 19. Report of Committee on Style and Arrangement.

*Sept. 17* This recommendation of the committee was included in the final draft of the Constitution as Article I, Section 8, clause 18.

#### POWER FOR THE MANAGEMENT OF THE GENERAL INTEREST

*Aug. 22* **Details in Convention.** Rutledge, from the committee to whom were referred on August 18 and 20 the propositions made by Madison and C. Pinckney, submitted the following report which received no consideration: At the end of the sixteenth clause, of the second section, seventh article, add, "and to provide, as may become necessary, from time to time, for the well managing and securing the common property and general interests and welfare of the United States in such manner as shall not interfere with the government of individual states, in matters which respect only their internal police, or for which their individual authority may be competent."

#### JUDICIAL EXPLICATIONS

United States v. Macintosh, 283 U.S. 605 (1931)

Fox Film Corporation v. Doyal, 286 U.S. 123 (1932)

United States v. Smith, 5 Wheat. 153 (1820)

McCulloch v. Maryland, 4 Wheat. 316 (1819)

Juilliard v. Greenman, *supra*

Fong Yue Ting v. United States, 149 U.S. 698 (1893)

Ashwander v. Tennessee Valley Authority, 297 U.S. 288 (1936)

See Graves v. New York under "Fiscal Powers"

#### SURVEY OF PROCEEDINGS ON OBLIGATIONS, PREROGATIVES AND POWERS OF CONGRESS

[Insertion by Compiler]

**Obligations of Congress.** In modern governments, built upon democratic foundations, provision for the compensation of legislators is commonly made by the legislature itself, contrary to the

strictures of Madison. To be independent, the law-making organ must control its salary scale subject to political penalties; to be representative, its membership must be within the reach of citizens dependent upon pay for the devotion of their time to the public service. The federal legislature, obligated by the Constitution to satisfy this need, has done so from the beginning, at first on a per diem basis, in later years by fixing annual salaries.

Representation in its early phases, as already explained, made the representative a spokesman for the borough or the county in considering the demand of kings for new taxes; naturally, therefore, his compensation was the obligation of the constituency he served. Even after he acquired typical legislative responsibilities which made him an agent of the state, this obligation of constituencies continued until about 1681. Thereafter compensation for legislative service fell into disuse in England and was not revived until 1911 when it was made an obligation of the nation. After following the English practice of payment by constituencies until 1661, Virginia adopted the principle of payment by the colony and pioneered the typical American solution of the problem by making provision for compensation an obligation of the legislature. When the question came before the Philadelphia Convention, this was the general practice of states.

The proposition approved for a time in Convention that the compensation of federal legislators should be left to the states was in essence a reversion to the original English practice of payment by constituencies. It disregarded the sound principle that had guided deliberations on other questions; namely, that functions of general import or those for the performance of which the states are unfitted belong by nature to the nation. With a better perspective of the federal system they were building, the makers finally decided that the compensation of federal legislators should be left to the discretion of Congress.

Annual sessions of Congress were provided for by the Constitution because American experience during the colonial period condemned the English method of convening, proroguing, and dissolving legislatures by executive decree. These powers exercised by royal governors in the colonies produced much friction

and antagonism and led to the abolition of executive power to prorogue and dissolve, and to the fixing of time and place for sessions of state legislatures. The establishment of Congress as an independent department of government made the experience of the states relative to annual sessions a determining factor when this question came before the Philadelphia Convention. The Constitution prescribes the place for these annual sessions and fixes the time, with the proviso that Congress might change it to meet new conditions. Of course, the effect of this provision is to obligate Congress to meet annually as the law provides.

Another obligation arising from the independent functioning of Congress as a co-ordinate department of government is to transact its business with a specified quorum. To prevent legislation by minorities, the Constitution requires the presence of a quorum consisting of a majority of the members of each house. Under the English cabinet system the size of the quorum is a matter of little importance, because legislative responsibility is concentrated in a few leaders who control a majority of the House of Commons and hold at the same time important executive positions. No such relationship between legislative and executive departments exists under the presidential system, hence the importance of the relatively large quorum required by the federal Constitution. To prevent the paralysis of the legislative function under American conditions, less than a quorum may adjourn from day to day and may compel the attendance of absentees.

Each house is required to keep a journal of its proceedings because without a record of what their representatives do at the national capital, scattered American constituencies are unable to pass judgment on their services. Moreover, the Constitution prescribes certain imperative requirements, the satisfaction of which can be established only by a journal of proceedings. The importance of this obligation is conclusively verified by these considerations. The source of this obligation is the practice of the House of Commons, of colonial and state legislatures, and of the Congress of the Confederation.

Adjournment must be left in the nature of things to the dis-

cretion of each house. The possibility of abusing this inherent legislative power is guarded against by limiting the number of days each house may adjourn without the consent of the other, and by authorizing the executive to reconcile differences between the two houses on the subject. These limitations, therefore, operate as obligations on Congress.

**Prerogatives of Federal Legislative Branches.** Two of the prerogatives vested in the branches of Congress by the Constitution were the products of American experience. The electoral prerogative of the House and the corresponding function of the Senate were really corollaries of that distinctive American creation, the electoral college. The subsequent development of a two-party system caused the whole process of electing a president and vice president by means of a special instrumentality chosen for that purpose to sink into innocuous desuetude. The dormant utility of these provisions, however, could be revived by the development of a multi-party system. The other prerogative of a distinctive American origin is the participation of the Senate in appointments and treaty-making. The chronic distrust of executive power originating in colonial times and surviving to our day caused the development in the first states of legislative provisions for checking executive power. When appointments and treaty-making were made functions of the President by the logic of events, it was natural that a characteristic American check upon the exercise of these powers should be provided by the Constitution makers. Under a presidential type of executive it is perhaps wise to have this restraint as a substitute for the more effective parliamentary control of a cabinet system, despite the fact that it has been perverted in the case of appointments to promote the spoils system. The requirements of a two-thirds vote for the approval of treaties seems to place it within the power of a minority to defeat progressive international agreements.

The other prerogatives developed in Convention go back to the early days of the English parliamentary system. The origin of revenue bills in the representative branch is really as old as the House of Commons. It has extended from this early beginning to all the descendants of that venerable body for pretty



much the same reason; namely, the control of taxation by representatives of the taxpayers. It appeared in America with the establishment of constitutional government there. Although it was expanded in England so as to make the House of Commons the dominant branch of Parliament, it lost its utility in this country when popularly elected upper branches of the legislature entered the political arena as champions of representative government. The form of the prerogative still pays tribute to a fundamental principle of the representative system; its substance leaves nothing but a local habitation and a name.

All of the other prerogatives developed in the Philadelphia Convention are quite as effective and indeed quite as necessary as they ever were. They carry us back to the struggles of the English House of Commons to secure independence in legislative processes and to establish effective control over executive organs. These methods, coming to America with the establishment of colonial government and perpetuating themselves in the early states, seem to be even more necessary in twentieth century America than they were in the land whence they came, because cabinet government in the mother country introduced simpler and speedier ways of accomplishing the same results, and presidential government in an imperial republic, with its separated departments, has made simpler methods impossible.

**Powers of Congress.** The superlative achievement of the Philadelphia Convention is a federal Constitution that functions as the supreme law of the land (see "Survey of Part Four"). Hardly less important was the development of principles that determined the distribution of powers between national and state governments (see sixth resolution on fundamentals). Throughout the colonial period, political conditions shaping the government of English settlements in America evolved thirteen separate governmental entities, each with institutions and laws basically English, and deeply rooted in the affections of the colonists; each with independent developments extending in some cases over a century, and all together producing a relationship to the mother country essentially federal in character. With such a background it was inevitable that when

conflict arose between the colonies and the mother country, the Declaratory Act of 1766 in which Parliament asserted its power to bind the colonies in all cases whatsoever should lead to revolution and finally to American independence. This culmination was the result of the failure of British statesmen to establish an imperial federation within which British colonies might possess extensive powers and privileges of local self-government.

Strange to say, the colonies themselves, converted into states by the Revolution, failed to solve the same problem. For a central organ, claiming unlimited powers over the colonies, they substituted a central organ in the Articles of Confederation with no coercive powers whatever, dependent upon requisitions for support, and unable to make effective decisions of a national character recognized as its proper function by the Articles themselves. Both English and American experience, therefore, contributed to the final solution of this problem worked out in the Philadelphia Convention. Perhaps it is correct to say that even the makers of the Constitution failed to grasp its full significance, for it is as sound today as it was when approved as a fundamental of the new Constitution.

It is not surprising that readers who regard it as a grant of power find it vague and indefinite. The real function of this fundamental is not to vest power but to guide in the allotment of power. It was so used by the Committee of Detail. Applying the principles it embodied, that Committee was able to do its best work. It would be easy to criticize certain features of that work, but on the whole it laid the foundations of national power and left the Supreme Court latitude for the adjustment of that power to new conditions as they arose.

#### CONTEMPORARY EXPLICATIONS

The Federalist, Nos. 23-36; 41-43; 59-61; 64-66



PART FOUR

EXECUTIVE AND JUDICIAL ORGANS  
OF THE FEDERAL GOVERNMENT

INTRODUCTION

The compiler of this volume has brought together in Part Four the development of the executive and the judiciary in the Philadelphia Convention. Because the problem of a federal executive gave the Convention much trouble and compelled frequent reconsiderations, the deliberations on that subject require two chapters (15 and 16) to give a balanced picture of the Convention's objectives. The chapter on the judiciary is relatively brief because fundamental features of a judicial system had been firmly established in the colonies, and agreements were easily reached on controversial questions.



CHAPTER 15  
THE FEDERAL EXECUTIVE: DEVELOPMENT OF  
FUNDAMENTALS

TYPE AND POWERS OF THE FEDERAL EXECUTIVE

**Preliminaries in Committee of the Whole.** Resolved, that a *May 29*  
national executive be instituted . . . and that besides a general authority to execute the national laws, it ought to enjoy the executive rights vested in Congress by the Confederation.  
Proposition in Virginia Plan.

C. Pinckney: Was for a vigorous executive, but was afraid the *June 1*  
executive powers of the existing Congress might extend to peace and war, etc.; which would render the executive a monarchy of the worst kind, to wit, an elective one.

Wilson: Moved that the executive consist of a single person.

C. Pinckney: Seconded the motion so as to read "that a national executive, to consist of a single person, be instituted."

A considerable pause ensuing, and the Chairman asking if he should put the question,

Franklin: Observed that it was a point of great importance, and wished that the gentlemen would deliver their sentiments on it before the question was put.

Rutledge: Animadverted on the shyness of gentlemen on this and other subjects. He said it looked as if they supposed themselves precluded, by having frankly disclosed their opinions, from afterwards changing them, which he did not take to be at all the case. He said he was for vesting the executive power in a single person, though he was not for giving him the power

of war and peace. A single man would feel the greatest responsibility, and administer the public affairs best.

Sherman: Said he considered the executive magistracy as nothing more than an institution for carrying the will of the legislature into effect; that the person or persons ought to be appointed by and accountable to the legislature only, which was the depository of the supreme will of the society. As they were the best judges of the business which ought to be done by the executive department, and consequently of the number necessary from time to time for doing it, he wished the number might not be fixed, but that the legislature should be at liberty to appoint one or more as experience might dictate.

Wilson: Preferred a single magistrate, as giving most energy, dispatch and responsibility to the office. He did not consider the prerogatives of the British monarch as a proper guide in defining the executive powers. Some of these prerogatives were of a legislative nature; among others, that of war and peace, etc. The only powers he considered strictly executive were those of executing the laws, and appointing officers, not appertaining to, and appointed by, the legislature.

Gerry: Favored the policy of annexing a council to the executive, in order to give weight and inspire confidence.

Randolph: Strenuously opposed an unity in the executive magistracy. He regarded it as the foetus of monarchy. We had, he said, no motive to be governed by the British government as our prototype. He did not mean, however, to throw censure on that excellent fabric. If we were in a situation to copy it, he did not know that he should be opposed to it; but the fixed genius of the people of America required a different form of government. He could not see why the great requisites for the executive department, vigor, dispatch, and responsibility, could not be found in three men as well as in one man. The executive ought to be independent. It ought, therefore, in order to support its independence, to consist of more than one.

Wilson: Said that unity in the executive, instead of being the foetus of monarchy, would be the best safeguard against tyranny. He repeated that he was not governed by the British

model, which was inapplicable to the situation of this country, the extent of which was so great, and the manners so republican, that nothing but a great confederated republic would do for it.

Wilson's motion for a single magistrate was postponed by common consent, the Committee seeming unprepared for any decision on it; and the first part of the clause agreed to, viz., "that a national executive be instituted."

Madison: Thought it would be proper, before a choice should be made between a unity and a plurality in the executive, to fix the extent of the executive authority; that as certain powers were in their nature executive, and must be given to that department, whether administered by one or more persons, a definition of their extent would assist the judgment in determining how far they might be safely entrusted to a single officer. He accordingly moved that so much of the clause before the Committee as related to the powers of the executive should be struck out, and that after the words "that a national executive ought to be instituted" there be inserted the words following, viz., "with power to carry into effect the national laws, to appoint to offices in cases not otherwise provided for, and to execute such other powers, 'not legislative nor judiciary in their nature,' as may from time to time be delegated by the national legislature." The words "not legislative nor judiciary in their nature" were added to the proposed amendment, in consequence of a suggestion by General Pinckney, that improper powers might otherwise be delegated.

Wilson: Seconded this motion.

C. Pinckney: Moved to amend the amendment by striking out the last member of it, viz., "and to execute such other powers, not legislative or judiciary in their nature, as may from time to time be delegated." He said they were unnecessary, the object of them being included in the "power to carry into effect the national laws."

Randolph: Seconded the motion.

Madison: Did not know that the words were absolutely neces-



sary, or even the preceding words, "to appoint to offices, etc." the whole being, perhaps, included in the first member of the proposition. He did not, however, see any inconvenience in retaining them, and cases might happen in which they might serve to prevent doubts and misconstructions.

In consequence of the motion of C. Pinckney, the question on Madison's motion was divided; and the words objected to by C. Pinckney struck out: Yeas 7 (Connecticut, New York, New Jersey, Pennsylvania, Delaware, North Carolina, Georgia); nays 3 (Massachusetts, Virginia, South Carolina); the preceding part of the motion being first agreed to: Divided 1 (Connecticut); all the other states in the affirmative.

*June 2*

Rutledge and C. Pinckney: Moved that the blank for the number of persons in the executive be filled with the words "one person." He supposed the reasons to be so obvious and conclusive in favor of one that no member would oppose the motion.

Randolph: Opposed it with great earnestness, declaring that he should not do justice to the country which sent him if he were silently to suffer the establishment of a unity in the executive department. He felt an opposition to it which he believed he should continue to feel as long as he lived. He urged—first, that the permanent temper of the people was adverse to the very semblance of monarchy; secondly, that a unity was unnecessary, a plurality being equally competent to all the objects of the department; thirdly, that the necessary confidence would never be reposed in a single magistrate; fourthly, that the appointments would generally be in favor of some inhabitant near the center of the community, and consequently the remote parts would not be on an equal footing. He was in favor of three members of the executive, to be drawn from different portions of the country.

Butler: Contended strongly for a single magistrate, as most likely to answer the purpose of the remote parts. If one man should be appointed, he would be responsible to the whole, and he would be impartial to its interests. If three or more should be taken from as many districts, there would be a constant

struggle for local advantages. In military matters this would be particularly mischievous. He said his opinion on this point had been formed under the opportunity he had had of seeing the manner in which a *plurality of military heads* distracted Holland, when threatened with invasion by the imperial troops. One man was for directing the force to the defense of this part, another to that part of the country, just as he happened to be swayed by prejudice or interest.

The question was resumed on motion of C. Pinckney, seconded by Wilson, "Shall the blank for the number of the executive be filled with a single person?"

June 4

Wilson: Was in favor of the motion. It had been opposed by the gentleman from Virginia (Mr. Randolph); but the arguments used had not convinced him. He observed that the objections of Mr. Randolph were leveled not so much against the measure itself as against its unpopularity. If he could suppose that it would occasion a rejection of the plan of which it should form a part, though the part were an important one, yet he would give it up rather than lose the whole. On examination, he could see no evidence of the alleged antipathy of the people. On the contrary, he was persuaded that it does not exist. All know that a single magistrate is not a king. One fact has great weight with him. All the thirteen states, though agreeing in scarce any other instance, agree in placing a single magistrate at the head of the government. The idea of three heads had taken place in none. The degree of power is, indeed, different; but there are no co-ordinate heads. In addition to his former reasons for preferring a unity, he would mention another. The *tranquillity*, not less than the vigor, of the government, he thought, would be favored by it. Among three equal members, he foresaw nothing but uncontrolled, continued and violent animosities; which would not only interrupt the public administration but diffuse their poison through the other branches of government, through the states, and at length through the people at large. If the members were to be unequal in power, the principle of opposition to the unity was given up. If equal, the making them an odd

number would not be a remedy. In courts of justice there are two sides only to a question. In the legislative and executive departments questions have commonly many sides. Each member, therefore, might espouse a separate one, and no two agree. Sherman: This matter is of great importance, and ought to be well considered before it is determined. Mr. Wilson, he said, had observed that in each state a single magistrate was placed at the head of the government. It was so, he admitted, and properly so; and he wished the same policy to prevail in the federal government. But then it should be also remarked that in all the states there was a council of advice, without which the first magistrate could not act. A council he thought necessary to make the establishment acceptable to the people. Even in Great Britain, the king has a council, and though he appoints it himself, its advice has its weight with him, and attracts the confidence of the people.

Williamson: Asks Mr. Wilson whether he means to annex a council.

Wilson: Means to have no council, which oftener serves to cover than prevent malpractices.

Gerry: Was at a loss to discover the policy of three members for the executive. It would be extremely inconvenient in many instances, particularly in military matters, whether relating to the militia, an army, or a navy. It would be a general with three heads.

On the question for a single executive, it was agreed to: Yeas 7 (Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia); nays 3 (New York, Delaware, Maryland).

*June 19*

**Fundamentals in Convention.** Resolved, that a national executive be instituted, to consist of a single person . . . with power to carry into execution the national laws; to appoint to offices in cases not otherwise provided for. . . . Ninth resolution, Committee of the Whole.

Resolved, that the national executive shall have a right to negative any legislative act which shall not be afterwards

passed by two-thirds of each branch of the national legislature.  
Tenth resolution, Committee of the Whole.

The first clause of the ninth resolution, viz., "That a national executive be instituted, to consist of a single person," was agreed to, *nem. con.* July 17

"To carry into execution the national laws," agreed to, *nem. con.*

"To appoint to offices in cases not otherwise provided for," agreed to, *nem. con.*

The tenth resolution, "that the executive shall have a right to negative legislative acts not afterwards passed by two-thirds of each branch," was passed, *nem. con.* July 18

McClurg: Asked whether it would not be necessary, before a committee for detailing the Constitution should be appointed, to determine on the means by which the executive is to carry the laws into effect, and to resist combinations against them. Is he to have a military force for the purpose, or to have the command of the militia, the only existing force that can be applied to that use? As the resolutions now stand, the committee will have no determinate directions on this great point. July 20

Wilson: Thought that some additional directions to the committee would be necessary.

King: The committee are to provide for the end. Their discretionary power to provide for the means is involved, according to an established axiom.

Wilson: Moved as an amendment to the tenth resolution, "that the supreme national judiciary should be associated with the executive in the revisionary power." This proposition had been before made and failed; but he was so confirmed by reflection in the opinion of its utility that he thought it incumbent on him to make another effort. The judiciary ought to have an opportunity of remonstrating against projected encroachments on the people as well as on themselves. It had been said that the judges, as expositors of the laws, would have an opportunity of defending their constitutional rights. There was weight in this observation; but this power of the judges July 21

did not go far enough. Laws may be unjust, may be unwise, may be dangerous, may be destructive; and yet may not be so unconstitutional as to justify the judges in refusing to give them effect. Let them have a share in the revisionary power and they will have an opportunity of taking notice of those characters of a law, and of counteracting, by the weight of their opinions, the improper views of the legislature.

Madison: Seconded the motion.

Gorham: Did not see the advantage of employing the judges in this way. As judges they are not to be presumed to possess any peculiar knowledge of the mere policy of public measures. Nor can it be necessary as a security for their constitutional rights. The judges in England have no such additional provision for their defense, yet their jurisdiction is not invaded. He thought it would be best to let the executive alone be responsible, and at most to authorize him to call on the judges for their opinions.

Ellsworth: Approved heartily of the motion. The aid of the judges will give more wisdom and firmness to the executive. They will possess a systematic and accurate knowledge of the laws, which the executive cannot be expected always to possess. The law of nations also will frequently come into question. Of this the judges alone will have competent information.

Madison: Considered the object of the motion as of great importance to the meditated Constitution. It would be useful to the judiciary department by giving it an additional opportunity of defending itself against legislative encroachments. It would be useful to the executive, by inspiring additional confidence and firmness in exerting the revisionary power. It would be useful to the legislature, by the valuable assistance it would give in preserving a consistency, conciseness, perspicuity, and technical propriety in the laws, qualities peculiarly necessary, and yet shamefully wanting in our republican codes. It would, moreover, be useful to the community at large, as an additional check against a pursuit of those unwise and unjust measures which constituted so great a portion of our calamities. If any solid objection could be urged against the motion, it must

be on the supposition that it tended to give too much strength, either to the executive or judiciary. He did not think there was the least ground for this apprehension. It was much more to be apprehended that notwithstanding this co-operation of the two departments, the legislature would still be an overmatch for them. Experience in all the states had evinced a powerful tendency in the legislature to absorb all power into its vortex. This was the real source of danger to the American constitutions; and suggested the necessity of giving every defensive authority to the other departments that was consistent with republican principles.

Mason: Said he had always been a friend to this provision. It would give a confidence to the executive, which he would not otherwise have, and without which the revisionary power would be of little avail.

Gerry: Did not expect to see this point, which had undergone full discussion, again revived. The object he conceived of the revisionary power was merely to secure the executive department against legislative encroachment. The executive, therefore, who will best know and be ready to defend his rights, ought alone to have the defense of them. The motion was liable to strong objections. It was combining and mixing together the legislative and the other departments. It was establishing an improper coalition between the executive and judiciary departments. It was making statesmen of the judges, and setting them up as the guardians of the rights of the people, as the guardians of their rights and interests. It was making the expositors of the laws the legislators, which ought never to be done. A better expedient for correcting the laws would be to appoint, as had been done in Pennsylvania, a person or persons of proper skill, to draw bills for the legislature.

Strong: Thought, with Mr. Gerry, that the power of making ought to be kept distinct from that of expounding the laws. No maxim was better established. The judges in exercising the function of expositors might be influenced by the part they had taken in passing the laws.

G. Morris: Some check being necessary on the legislature, the question is, in what hands it should be lodged. On one side, it was contended that the executive alone ought to exercise it. He did not think that an executive appointed for six years, and impeachable whilst in office, would be a very effectual check. On the other side, it was urged that he ought to be reinforced by the judiciary department. Against this it was objected that expositors of laws ought to have no hand in making them, and arguments in favor of this had been drawn from England. What weight was due to them might be easily determined by an attention to facts. The truth was that the judges in England had a great share in the legislation. They are consulted in difficult and doubtful cases. They may be, and some of them are, members of the legislature. They are, or may be, members of the Privy Council; and can there advise the executive, as they will do with us if the motion succeeds. The influence the English judges may have, in the latter capacity, in strengthening the executive check cannot be ascertained, as the King, by his influence, in a manner dictates the laws. There is one difference in the two cases, however, which disconcerts all reasoning from the British to our proposed Constitution. The British executive has so great an interest in his prerogatives and such power for means of defending them that he will never yield any part of them. The interest of our executive is so inconsiderable and so transitory, and his means of defending it so feeble that there is the justest ground to fear his want of firmness in resisting encroachments. He was extremely apprehensive that the auxiliary firmness and weight of the judiciary would not supply the deficiency. He concurred in thinking the public liberty in greater danger from legislative usurpations than from any other source. It had been said that the legislature ought to be relied on as the proper guardians of liberty. The answer was short and conclusive. Either bad laws will be pushed, or not. On the latter supposition, no check will be wanted. On the former, a strong check will be necessary. And this is the proper supposition. Emissions of paper money, largesses to the people, a remission

of debts, and similar measures, will at some times be popular, and will be pushed for that reason. At other times, such measures will coincide with the interests of the legislature themselves, and that will be a reason not less cogent for pushing them. It may be thought that the people will not be deluded and misled in the latter case. But experience teaches another lesson. The press is indeed a great means of diminishing the evil, yet it is found to be unable to prevent it altogether.

L. Martin: Considered the association of the judges with the executive as a dangerous innovation; as well as one that could not produce the particular advantage expected from it. A knowledge of mankind and of legislative affairs cannot be presumed to belong in a higher degree to the judges than to the legislature. And as to the constitutionality of laws, that point will come before the judges in their official character. In this character they have a negative on the laws. Join them with the executive in the revision, and they will have a double negative. It is necessary that the supreme judiciary should have the confidence of the people. This will soon be lost, if they are employed in the task of remonstrating against popular measures of the legislature. Besides, in what mode and proportion are they to vote in the Council of Revision.

Madison: Could not discover in the proposed association of the judges with the executive, in the revisionary check on the legislature, any violation of the maxim which requires the great departments of power to be kept separate and distinct. On the contrary, he thought it an auxiliary precaution, in favor of the maxim. If a constitutional discrimination of the departments on paper were a sufficient security to each against encroachments of the others, all further provisions would indeed be superfluous. But experience had taught us a distrust of that security; and that it is necessary to introduce such a balance of powers and interests as will guarantee the provisions on paper. Instead, therefore, of contenting ourselves with laying down the theory in the Constitution that each department ought to be separate and distinct, it was proposed to add a defensive power to each, which should maintain the theory in practice.



In so doing, we did not blend the departments together. We erected effectual barriers for keeping them separate. The most regular example of this theory was in the British constitution. Yet it was not only the practice there to admit the judges to a seat in the legislature, and in the executive councils, and submit to their previous examination all laws of a certain description, but it was a part of their constitution that the executive might negative any law whatever; a part of *their* constitution which had been universally regarded as calculated for the preservation of the whole. The objection against a union of the judiciary and executive branches, in the revision of the laws, had either no foundation, or was not carried far enough. If such a union was an improper mixture of powers, or such a judiciary check on the laws was inconsistent with the theory of a free constitution, it was equally so to admit the executive to any participation in the making of laws; and the revisionary plan ought to be discarded altogether.

Mason: Observed that the defense of the executive was not the sole object of the revisionary power. He expected even greater advantages from it. Notwithstanding the precautions taken in the constitution of the legislature, it would still so much resemble that of the individual states that it must be expected frequently to pass unjust and pernicious laws. This restraining power was therefore essentially necessary. It would have the effect not only of hindering the final passage of such laws, but would discourage demagogues from attempting to get them passed. It has been said (by Mr. L. Martin) that if the judges were joined in this check on the laws, they would have a double negative, since in their expository capacity of judges they would have one negative. He would reply that in this capacity they could impede, in one case only, the operation of laws. They could declare an unconstitutional law void. But with regard to every law, however unjust, oppressive or pernicious, that did not come plainly under this description, they would be under the necessity, as judges, to give it a free course. He wished the further use to be made of the judges of giving aid in preventing every improper law. Their aid will be the

more valuable, as they are in the habit and practice of considering laws in their true principles, and in all their consequences.

Wilson: The separation of the departments does not require that they should have separate objects, but that they should act separately, though on the same objects. It is necessary that the two branches of the legislature should be separate and distinct, yet they are both to act precisely on the same object.

Gerry: Had rather give the executive an absolute negative for its own defense than thus to blend together the judiciary and executive departments. It will bind them together in an offensive and defensive alliance against the legislature, and render the latter unwilling to enter into a contest with them.

G. Morris: Was surprised that any defensive provision for securing the effectual separation of the departments should be considered as an improper mixture of them. Suppose that the three powers were to be vested in three persons, by compact among themselves; that one was to have the power of making, another of executing, and a third of judging, the laws. Would it not be very natural for the two latter, after having settled the partition on paper, to observe, and would not candor oblige the former to admit, that, as a security against legislative acts of the former, which might easily be so framed as to undermine the powers of the two others, the two others ought to be armed with a veto for their own defense; or at least to have an opportunity of stating their objections against acts of encroachment? And would anyone pretend that such a right tended to blend and confound powers that ought to be separately exercised? As well might it be said that if three neighbors had three distinct farms, a right in each to defend his farm against his neighbors tended to blend the farms together.

Gorham: All agree that a check on the legislature is necessary. But there are two objections against admitting the judges to share in it which no observations on the other side seem to obviate. The first is that the judges ought to carry into the exposition of the laws no prepossessions with regard to them; the second, that, as the judges will outnumber the executive,

the revisionary check would be thrown entirely out of the executive hands, and, instead of enabling him to defend himself, would enable the judges to sacrifice him.

Wilson: The proposition is certainly not liable to all the objections which have been urged against it. According to Mr. Gerry, it will unite the executive and judiciary in an offensive and defensive alliance against the legislature. According to Mr. Gorham, it will lead to a subversion of the executive by the judiciary influence. To the first gentleman the answer was obvious: that the joint weight of the two departments was necessary to balance the single weight of the legislature. To the first objection stated by the other gentleman it might be answered that, supposing the prepossession to mix itself with the exposition, the evil would be overbalanced by the advantages promised by the expedient. To the second objection, that such a rule of voting might be provided, in the detail, as would guard against it.

Rutledge: Thought the judges of all men the most unfit to be concerned in the revisionary council. The judges ought never to give their opinion on a law till it comes before them. He thought it equally unnecessary. The executive could advise with the officers of state, as of war, finance, etc., and avail himself of their information and opinions.

On the question on Wilson's motion for joining the judiciary in the revision of laws, it passed in the negative: Yeas 3 (Connecticut, Maryland, Virginia); nays 4 (Massachusetts, Delaware, North Carolina, South Carolina); divided 2 (Pennsylvania, Georgia); absent 1 (New Jersey).

The tenth resolution, giving the executive a qualified veto, requiring two-thirds of each branch of the legislature to overrule it, was then agreed to, *nem. con.*

#### ELECTION AND TERM OF THE FEDERAL EXECUTIVE

May 29 Preliminaries in Committee of the Whole. Resolved, that a national executive . . . be chosen by the national legislature for the term of ———; . . . to be ineligible a second time. Proposition in Virginia Plan.

*June 1*

Wilson: Said he was almost unwilling to declare the mode which he wished to take place, being apprehensive that it might appear chimerical. He would say, however, at least, that in theory he was for an election by the people. Experience, particularly in New York and Massachusetts, showed that an election of the first magistrate by the people at large was both a convenient and successful mode. The objects of choice in such cases must be persons whose merits have general notoriety.

Sherman: Was for the appointment by the legislature, and for making him absolutely dependent on that body, as it was the will of that which was to be executed. An independence of the executive on the supreme legislature was, in his opinion, the very essence of tyranny, if there was any such thing.

Wilson: Moved that the blank for the term of duration should be filled with "three years," observing, at the same time, that he preferred this short period on the supposition that a re-eligibility would be provided for.

C. Pinckney: Moved for "seven years."

Sherman: Was for three years, and against the doctrine of rotation, as throwing out of office the men best qualified to execute its duties.

Mason: Was for seven years at least, and for prohibiting a re-eligibility, as the best expedient, both for preventing the effect of a false complaisance on the side of the legislature towards unfit characters, and a temptation on the side of the executive to intrigue with the legislature for a reappointment.

Bedford: Was strongly opposed to so long a term as seven years. He begged the Committee to consider what the situation of the country would be, in case the first magistrate should be saddled on it for such a period, and it should be found on trial that he did not possess the qualifications ascribed to him, or should lose them after his appointment. An impeachment, he said, would be no cure for this evil, as an impeachment would reach misfeasance only, not incapacity. He was for a triennial election, and for an ineligibility after a period of nine years.

On the question, "for seven years": Yeas 5 (New York, New Jersey, Pennsylvania, Delaware, Virginia); nays 4 (Connecticut,

North Carolina, South Carolina, Georgia); divided 1 (Massachusetts). There being five yeas, four noes, and one divided, a question was asked whether a majority had voted in the affirmative. The President decided that it was an affirmative vote.

The *mode of appointing* the executive was the next question.

Wilson: Renewed his declarations in favor of an appointment by the people. He wished to derive not only both branches of the legislature from the people without the intervention of the state legislatures, but the executive also, in order to make them as independent as possible of each other, as well as of the states.

Mason: Favors the idea, but thinks it impracticable. He wishes, however, that Mr. Wilson might have time to digest it into his own form. The clause "to be chosen by the national legislature" was accordingly postponed.

Rutledge: Suggests an election of the executive by the second branch only of the national legislature.

June 2

Wilson: Made the following motion, to be substituted for the mode proposed by Mr. Randolph's resolution, "that the executive magistracy shall be elected in the following manner: That the states be divided into ——— districts and that the persons qualified to vote in each district for members of the first branch of the national legislature elect ——— members for their respective districts to be electors of the executive magistracy; that the said electors of the executive magistracy meet at ———, and they, or any ——— of them, so met, shall proceed to elect by ballot, but not out of their own body, ——— person— in whom the executive authority of the national government shall be vested."

Wilson: Repeated his arguments in favor of an election without the intervention of the states. He supposed, too, that this mode would produce more confidence among the people in the first magistrate than an election by the national legislature.

Gerry: Opposed the election by the national legislature. There would be a constant intrigue kept up for the appointment. The legislature and the candidates would bargain and play into one another's hands. Votes would be given by the former

under promises or expectations from the latter of recompensing them by services to members of the legislature or their friends. He liked the principle of Mr. Wilson's motion, but fears it would alarm and give a handle to the state partisans as tending to supersede altogether the state authorities. He thought the community not yet ripe for stripping the states of their powers, even such as might not be requisite for local purposes. He was for waiting till the people should feel more the necessity of it. He seemed to prefer the taking the suffrages of the states instead of electors; or letting the legislatures nominate, and the electors appoint. He was not clear that the people ought to act directly even in the choice of electors, being too little informed of personal characters in large districts, and liable to deceptions.

Williamson: Could see no advantage in the introduction of electors chosen by the people who would stand in the same relation to them as the state legislatures, whilst the expedient would be attended to with great trouble and expense.

On the question for agreeing to Wilson's substitute, it was negatived: Yeas 2 (Pennsylvania, Maryland); nays 8 (Massachusetts, Connecticut, New York, Delaware, Virginia, North Carolina, South Carolina, Georgia).

On the question for electing the executive by the national legislature for the term of seven years, it was agreed to: Yeas 8 (Massachusetts, Connecticut, New York, Delaware, Virginia, North Carolina, South Carolina, Georgia); nays 2 (Pennsylvania, Maryland).

The question for making the executive "ineligible after seven years" was next taken and agreed to: Yeas 7 (Massachusetts, New York, Delaware, Maryland, Virginia, North Carolina, South Carolina); nays 2 (Connecticut, Georgia); divided 1 (Pennsylvania).

Gerry: According to previous notice given by him moved "that the national executive should be elected by the executives of the states, whose proportion of votes should be the same with that allowed to the states in the election of the Senate." If the appointment should be made by the national legislature, it

*June 9*

would lessen that independence of the executive, which ought to prevail; would give birth to intrigue and corruption between the executive and legislature previous to the election, and to partiality in the executive afterwards to the friends who promoted him. Some other mode, therefore, appeared to him necessary. He proposed that of appointing by the state executives as most analogous to the principle observed in electing the other branches of the national government; the first branch being chosen by the *people* of the states and the second by the legislatures of the states, he did not see any objection against letting the executive be appointed by the executives of the states. He supposed the executives would be most likely to select the fittest men, and that it would be their interest to support the man of their own choice.

Randolph: Urged strongly the inexpediency of Mr. Gerry's mode of appointing the national executive. The confidence of the people would not be secured by it to the national magistrate. The small states would lose all chance of an appointment from within themselves. Bad appointments would be made, the executives of the states being little conversant with characters not within their own small spheres. The state executives, too, notwithstanding their constitutional independence, being in fact dependent on the state legislatures, will generally be guided by the views of the latter, and prefer either favorites within the states, or such as it may be expected will be most partial to the interests of the state. A national executive thus chosen will not be likely to defend with becoming vigilance and firmness the national rights against state encroachments. Vacancies also must happen. How can these be filled? He could not suppose, either, that the executives would feel the interest in supporting the national executive which had been imagined. They will not cherish the great oak which is to reduce them to paltry shrubs.

On the question for referring the appointment of the national executive to the state executives, as proposed by Gerry: Nays 9 (Massachusetts, Connecticut, New York, New Jersey, Penn-

sylvania, Maryland, Virginia, South Carolina, Georgia); divided 1 (Delaware).

**Fundamentals in Convention.** Resolved, that a national executive . . . be chosen by the national legislature, for the term of seven years; . . . to be ineligible a second time. . . .  
*June 19*  
Ninth resolution, Committee of the Whole.

“To be chosen by the national legislature” being considered:  
*July 17*  
G. Morris: Was pointedly against his being so chosen. He will be the mere creature of the legislature, if appointed and impeachable by that body. He ought to be elected by the people at large, by the freeholders of the country. That difficulties attend this mode, he admits. But they have been found superable in New York and in Connecticut, and would, he believed, be found so in the case of an executive for the United States. If the people should elect, they will never fail to prefer some man of distinguished character, or services; some man, if he might so speak, of continental reputation. If the legislature elect, it will be the work of intrigue, of cabal, and of faction; it will be like the election of a pope by a conclave of cardinals; real merit will rarely be the title to the appointment. He moved to strike out “national legislature” and insert “citizens of the United States.”

Sherman: Thought that the sense of the nation would be better expressed by the legislature than by the people at large. The latter will never be sufficiently informed of characters, and besides will never give a majority of votes to any one man. They will generally vote for some man in their own state, and the largest state will have the best chance for the appointment. If the choice be made by the legislature, a majority of voices may be made necessary to constitute an election.

Wilson: Two arguments have been urged against an election of the executive magistrate by the people. The first is the example of Poland, where an election of the supreme magistrate is attended with the most dangerous commotions. The cases, he observed, were totally dissimilar. The Polish nobles have



resources and dependants which enable them to appear in force, and to threaten the republic as well as each other. In the next place, the electors all assemble at one place; which would not be the case with us. The second argument is that a majority of the people would never concur. It might be answered that the concurrence of a majority of the people is not a necessary principle of election, nor required as such in any of the states. But allowing the objection all its force, it may be obviated by the expedient used in Massachusetts, where the legislature, by a majority of voices, decide in case a majority of the people do not concur in favor of one of the candidates. This would restrain the choice to a good nomination at least, and prevent in a great degree intrigue and cabal. A particular objection with him against an absolute election by the legislature was that the executive in that case would be too dependent to stand the mediator between the intrigues and sinister views of the representatives and the general liberties and interests of the people.

C. Pinckney: Did not expect this question would again have been brought forward; an election by the people being liable to the most obvious and striking objections. They will be led by a few active and designing men. The most populous states, by combining in favor of the same individual, will be able to carry their points. The national legislature being most immediately interested in the laws made by themselves, will be most attentive to the choice of a fit man to carry them properly into execution.

G. Morris: It is said that in case of an election by the people, the populous states will combine and elect whom they please. Just the reverse. The people of such states cannot combine. If there be any combination, it must be among their representatives in the legislature. It is said the people will be led by a few designing men. This might happen in a small district. It can never happen throughout the continent. In the election of a governor of New York, it sometimes is the case in particular spots that the activity and intrigues of little partisans are successful, but the general voice of the state is never influenced

by such artifices. It is said, the multitude will be uninformed. It is true they would be uninformed of what passed in the legislative conclave if the election were to be made there; but they will not be uninformed of those great and illustrious characters which have merited their esteem and confidence. If the executive be chosen by the national legislature, he will not be independent of it; and if not independent, usurpation and tyranny on the part of the legislature will be the consequence. This was the case in England in the last century. It has been the case in Holland, where their senates have engrossed all power. It has been the case everywhere. He was surprised that an election by the people at large should ever have been likened to the Polish election of the first magistrate. An election by the legislature will bear a real likeness to the election by the Diet of Poland. The great must be the electors in both cases, and the corruption and cabal which are known to characterize the one would soon find their way into the other. Appointments made by numerous bodies are always worse than those made by single responsible individuals or by the people at large.

Mason: It is curious to remark the different language held at different times. At one moment we are told that the legislature is entitled to thorough confidence, and to indefinite power. At another, that it will be governed by intrigue and corruption, and cannot be trusted at all. But not to dwell on this inconsistency, he would observe that a government which is to last ought at least to be practicable. Would this be the case if the proposed election should be left to the people at large? He conceived it would be as unnatural to refer the choice of a proper character for chief magistrate to the people as it would to refer a trial of colors to a blind man. The extent of the country renders it impossible that the people can have the requisite capacity to judge of the respective pretensions of the candidates.

Wilson: Could not see the contrariety stated by Col. Mason. The legislature might deserve confidence in some respects, and distrust in others. In acts which were to affect them and their

constituents precisely alike, confidence was due; in others, jealousy was warranted. The appointment to great offices where the legislature might feel many motives not common to the public confidence was surely misplaced. This branch of business, it was notorious, was the most corruptly managed of any that had been committed to legislative bodies.

Williamson: Conceived that there was the same difference between an election in this case, by the people and by the legislature, as between an appointment by lot and by choice. There are at present distinguished characters, who are known perhaps to almost every man. This will not always be the case. The people will be sure to vote for some man in their own state; and the largest state will be sure to succeed. This will not be Virginia, however. Her slaves will have no suffrage. As the salary of the executive will be fixed and he will not be eligible a second time, there will not be such a dependence on the legislature as has been imagined.

On the question on an election by the people instead of the legislature, it passed in the negative: Yeas 1 (Pennsylvania); nays 9 (Massachusetts, Connecticut, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia).

L. Martin: Moved that the executive be chosen by electors appointed by the several legislatures of the individual states.

Broom: Seconds.

On the question, it passed in the negative: Yeas 2 (Delaware, Maryland); nays 8 (Massachusetts, Connecticut, New Jersey, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia).

On the question on the words "to be chosen by the national legislature," it passed unanimously in the affirmative.

"For the term of seven years"—postponed, *nem. con.*, on motion of Houston and G. Morris.

"To be ineligible a second time,"—

Houston: Moved to strike out this clause.

Sherman: Seconds the motion.

G. Morris: Espoused the motion. The ineligibility proposed by the clause as it stood tended to destroy the great motive to good

behavior, the hope of being rewarded by a reappointment. It was saying to him, make hay while the sun shines.

On the question for striking out, as moved by Houston, it passed in the affirmative: Yeas 6 (Massachusetts, Connecticut, New Jersey, Pennsylvania, Maryland, Georgia); nays 4 (Delaware, Virginia, North Carolina, South Carolina).

The clause "for the term of seven years" being resumed:

Broom: Was for a shorter term, since the executive magistrate was now to be re-eligible. Had he remained ineligible a second time, he should have preferred a longer term.

McClurg: <sup>1</sup> Moved to strike out seven years, and insert "during good behavior." By striking out the words declaring him not re-eligible, he was put into a situation that would keep him dependent forever on the legislature; and he conceived the independence of the executive to be equally essential with that of the judiciary department.

G. Morris: Seconded the motion. He expressed great pleasure in hearing it. This was the way to get a good government. His fear that so valuable an ingredient would not be attained had led him to take the part he had done. He was indifferent how the executive should be chosen, provided he held his place by this tenure.

Broom: Highly approved the motion. It obviated all his difficulties.

Sherman: Considered such a tenure as by no means safe or admissible. As the executive magistrate is now re-eligible, he will be on good behavior as far as will be necessary. If he behaves well, he will be continued; if otherwise, displaced on a succeeding election.

Madison: <sup>2</sup> If it be essential to the preservation of liberty that the legislative, executive, and judiciary powers be separate, it is

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<sup>1</sup> The probable object of this motion was merely to enforce the argument against the re-eligibility of the executive magistrate by holding out a tenure during good behavior as the alternative for keeping him independent of the legislature.

<sup>2</sup> The view here taken of the subject was meant to aid in parrying the animadversions likely to fall on the motion of McClurg, for whom J.M. had a particular regard. McClurg, though possessing talents of the highest order, was modest and unaccustomed to exert them in public debate.

essential to a maintenance of the separation that they should be independent of each other. The executive could not be independent of the legislature if dependent on the pleasure of that branch for a reappointment. Why was it determined that the judges should not hold their places by such a tenure? Because they might be tempted to cultivate the legislature, by an undue complaisance, and thus render the legislature the virtual expositor as well as the maker of the laws. In like manner, a dependence of the executive on the legislature would render it the executor as well as the maker of laws; and then, according to the observation of Montesquieu, tyrannical laws may be made that they may be executed in a tyrannical manner. There was an analogy between the executive and judiciary departments in several respects. The latter executed the laws in certain cases as the former did in others. The former expounded and applied them for certain purposes as the latter did for others. The difference between them seemed to consist chiefly in two circumstances—first, the collective interest and security were much more in the power belonging to the executive than to the judiciary department; secondly, in the administration of the former, much greater latitude is left to opinion and discretion than in the administration of the latter. But if the second consideration proves that it will be more difficult to establish a rule sufficiently precise for trying the executive than the judges, and forms an objection to the same tenure of office, both considerations prove that it might be more dangerous to suffer a union between the executive and legislative powers than between the judiciary and legislative powers. He conceived it to be absolutely necessary to a well constituted republic that the two first should be kept distinct and independent of each other. Whether the plan proposed by the motion was a proper one was another question, as it depended on the practicability of instituting a tribunal for impeachments as certain and as adequate in the one case as in the other. On the other hand, respect for the mover entitled his proposition to a fair hearing and discussion, until a less objectionable expedient should be applied for guarding against

a dangerous union of the legislative and executive departments.

Mason: This motion was made some time ago, and negatived by a very large majority. He trusted that it would be again negatived. It would be impossible to define the misbehavior in such a manner as to subject it to a proper trial; and perhaps still more impossible to compel so high an offender, holding his office by such a tenure, to submit to a trial. He considered an executive during good behavior as a softer name only for an executive for life. And that the next would be an easy step to hereditary monarchy. If the motion should finally succeed, he might himself live to see such a revolution. If he did not, it was probable his children or grandchildren would. He trusted there were few men in that house who wished for it. No state, he was sure, had so far revolted from republican principles as to have the least bias in its favor.

Madison: Was not apprehensive of being thought to favor any step towards monarchy. The real object with him was to prevent its introduction. Experience had proved a tendency in our government to throw all power into the legislative vortex. The executives of the states are in general little more than ciphers; the legislatures omnipotent. If no effectual check be devised for restraining the instability and encroachments of the latter, a revolution of some kind or other would be inevitable. The preservation of republican government therefore required some expedient for the purpose, but required evidently at the same time that, in devising it, the genuine principles of that form should be kept in view.

G. Morris: Was as little a friend to monarchy as any gentleman. He concurred in the opinion that the way to keep out monarchical government was to establish such a republican government as would make the people happy and prevent a desire of change.

McClurg: Was not so much afraid of the shadow of monarchy as to be unwilling to approach it; nor so wedded to republican government as not to be sensible of the tyrannies that had been and may be exercised under that form. It was an essential

object with him to make the executive independent of the legislature; and the only mode left for effecting it, after the vote destroying his ineligibility a second time, was to appoint him during good behavior.

On the question for inserting "during good behavior" in place of "seven years" (with a re-eligibility), it passed in the negative: Yeas 4 (New Jersey, Pennsylvania, Delaware, Virginia); nays 6 (Massachusetts, Connecticut, Maryland, North Carolina, South Carolina, Georgia).<sup>3</sup>

On the motion to strike out "seven years," it passed in the negative: Yeas 4 (Massachusetts, Pennsylvania, Delaware, North Carolina); nays 6 (Connecticut, New Jersey, Maryland, Virginia, South Carolina, Georgia).<sup>4</sup>

*July 19* On reconsideration of the vote rendering the executive re-eligible a second time,—

L. Martin: Moved to reinstate the words "to be ineligible a second time."

G. Morris: It is necessary to take into one view all that relates to the establishment of the executive, on the due formation of which must depend the efficacy and utility of the union among the present and future states. It has been a maxim in political science that republican government is not adapted to a large extent of country, because the energy of the executive magistracy cannot reach the extreme parts of it. Our country is an extensive one. We must either then renounce the blessings of the Union or provide an executive with sufficient vigor to pervade every part of it. This subject was of so much importance

<sup>3</sup> This vote is not to be considered as any certain index of opinion, as a number in the affirmative probably had it chiefly in view to alarm those attached to a dependence of the executive on the legislature, and thereby facilitate some final arrangement of a contrary tendency. The avowed friends of an executive "during good behavior" were not more than three or four, nor is it certain they would have adhered to such a tenure. An independence of the three great departments of each other, as far as possible, and the responsibility of all to the will of the community, seemed to be generally admitted as the true basis of a well constructed government.

<sup>4</sup> There was no debate on this motion. The apparent object of many in the affirmative was to secure the re-eligibility by shortening the term, and of many in the negative to embarrass the plan of referring the appointment and dependence of the executive to the legislature.

that he hoped to be indulged in an extensive view of it. One great object of the executive is to control the legislature. The legislature will continually seek to aggrandize and perpetuate themselves; and will seize those critical moments produced by war, invasion, or convulsion, for that purpose. It is necessary, then, that the executive magistrate should be the guardian of the people, even of the lower classes, against legislative tyranny; against the great and the wealthy, who in the course of things will necessarily compose the legislative body. Wealth tends to corrupt the mind—to nourish its love of power, and to stimulate it to oppression. History proves this to be the spirit of the opulent. The check provided in the second branch was not meant as a check on legislative usurpations of power, but on the abuse of lawful powers, on the propensity of the first branch to legislate too much, to run into projects of paper money, and similar expedients. It is no check on legislative tyranny. On the contrary it may favor it; and if the first branch can be seduced, may find the means of success. The executive, therefore, ought to be so constituted as to be the great protector of the mass of the people. It is the duty of the executive to appoint the officers and to command the forces of the republic; to appoint, first, ministerial officers for the administration of public affairs, secondly, officers for the dispensation of justice. Who will be the best judges whether these appointments be well made? The people at large, who will know, will see, will feel, the effects of them. Again, who can judge so well of the discharge of military duties for the protection and security of the people, as the people themselves, who are to be protected and secured? He finds, too, that the executive is not to be re-eligible. What effect will this have? In the first place, it will destroy the great incitement to merit public esteem, by taking away the hope of being rewarded with a reappointment. It may give a dangerous turn to one of the strongest passions in the human breast. The love of fame is the great spring to noble and illustrious actions. Shut the civil road to glory, and he may be compelled to seek it by the sword. In the second place, it will tempt him to make the most of the short space



of time allotted him, to accumulate wealth and provide for his friends. In the third place, it will produce violations of the very Constitution it is meant to secure. In moments of pressing danger, the tried abilities and established character of a favorite magistrate will prevail over respect for the forms of the Constitution. The executive is also to be impeachable. This is a dangerous part of the plan. It will hold him in such dependence that he will be no check on the legislature, will not be a firm guardian of the people and of the public interest. He will be the tool of a faction, of some leading demagogue in the legislature. These then, are the faults of the executive establishment, as now proposed. Can no better establishment be devised? If he is to be the guardian of the people, let him be appointed by the people. If he is to be a check on the legislature, let him not be impeachable. Let him be of short duration, that he may with propriety be re-eligible. It has been said that the candidates for this office will not be known to the people. If they be known to the legislature, they must have such a notoriety and eminence of character that they cannot possibly be unknown to the people at large. It cannot be possible that a man shall have sufficiently distinguished himself to merit this high trust without having his character proclaimed by fame throughout the empire. As to the danger from an unimpeachable magistrate, he could not regard it as formidable. There must be certain great officers of state, a minister of finance, of war, of foreign affairs, etc. These, he presumes, will exercise their functions in subordination to the executive, and will be amenable, by impeachment, to the public justice. Without these ministers, the executive can do nothing of consequence. He suggested a biennial election of the executive, at the time of electing the first branch; and the executive to hold over, so as to prevent any interregnum in the administration. An election by the people at large, throughout so great an extent of country, could not be influenced by those little combinations and those momentary lies, which often decide popular elections within a narrow sphere. It will probably be objected that the election will be influenced by the

members of the legislature, particularly of the first branch; and that it will be nearly the same thing with an election by the legislature itself. It could not be denied that such an influence would exist. But it might be answered that as the legislature or the candidates for it would be divided, the enmity of one part would counteract the friendship of another; that if the administration of the executive were good, it would be unpopular to oppose his re-election; if bad, it ought to be opposed, and a reappointment prevented; and lastly, that in every view this indirect dependence on the favor of the legislature could not be so mischievous as a direct dependence for his appointment. He saw no alternative for making the executive independent of the legislature, but either to give him his office for life or make him eligible by the people. Again, it might be objected that two years would be too short a duration. But he believes that as long as he should behave himself well, he would be continued in his place. The extent of the country would secure his re-election against the factions and discontents of particular states. It deserved consideration, also, that such an ingredient in the plan would render it extremely palatable to the people. These were the general ideas which occurred to him on the subject, and which led him to wish and move that the whole constitution of the executive might undergo reconsideration.

Randolph: Urged the motion of Mr. L. Martin for restoring the words making the executive ineligible a second time. If he ought to be independent, he should not be left under a temptation to court a reappointment. If he should be reappointable by the legislature, he will be no check on it. His revisionary power will be of no avail. He had always thought and contended, as he still did, that the danger apprehended by the little states was chimerical; but those who thought otherwise ought to be peculiarly anxious for the motion. If the executive be appointed, as has been determined, by the legislature, he will probably be appointed either by joint ballot of both houses or be nominated by the first and appointed by the second branch. In either case the large states will preponderate.

If he is to court the same influence for his reappointment, will he not make his revisionary power, and all the other functions of his administration, subservient to the views of the large states? Besides, is there not great reason to apprehend that, in case he should be re-eligible, a false complaisance in the legislature might lead them to continue an unfit man in office, in preference to a fit one? It has been said that a constitutional bar to reappointment will inspire unconstitutional endeavors to perpetuate himself. It may be answered that his endeavors can have no effect unless the people be corrupt to such a degree as to render all precautions hopeless; to which may be added that this argument supposes him to be more powerful and dangerous than other arguments which have been used admit, and consequently calls for stronger fetters on his authority. He thought an election by the legislature, with an incapacity to be elected a second time, would be more acceptable to the people than the plan suggested by Mr. Gouverneur Morris.

King: Did not like the ineligibility. He thought there was great force in the remarks of Mr. Sherman, that he who has proved himself most fit for an office ought not to be excluded by the Constitution from holding it. He would therefore prefer any other reasonable plan that could be substituted. He was much disposed to think that in such cases the people at large would choose wisely. There was indeed some difficulty arising from the improbability of a general concurrence of the people in favor of any one man. On the whole, he was of opinion that an appointment by electors chosen by the people for the purpose would be liable to fewest objections.

Paterson: His ideas nearly coincided, he said, with those of Mr. King. He proposed that the executive should be appointed by electors, to be chosen by the states in a ratio that would allow one elector to the smallest and three to the largest states.

Wilson: It seems to be the unanimous sense that the executive should not be appointed by the legislature unless he be rendered ineligible a second time: he perceived with pleasure that the idea was gaining ground of an election, mediately or immediately, by the people.

Madison: If it be a fundamental principle of free government that the legislative, executive and judiciary powers should be *separately* exercised, it is equally so that they be *independently* exercised. There is the same, and perhaps greater, reason why the executive should be independent of the legislature than why the judiciary should. A coalition of the two former powers would be more immediately and certainly dangerous to public liberty. It is essential, then, that the appointment of the executive should either be drawn from some source or held by some tenure that will give him a free agency with regard to the legislature. This could not be if he was to be appointable from time to time by the legislature. It was not clear that an appointment in the first instance, even with an ineligibility afterwards, would not establish an improper connection between the two departments. Certain it was that the appointment would be attended with intrigues and contentions that ought not to be unnecessarily admitted. He was disposed for these reasons to refer the appointment to some other source. The people at large was, in his opinion, the fittest in itself. It would be as likely as any that could be devised, to produce an executive magistrate of distinguished character. The people generally could only know and vote for some citizen whose merits had rendered him an object of general attention and esteem. There was one difficulty, however, of a serious nature attending an immediate choice by the people. The right of suffrage was much more diffusive in the northern than the southern states; and the latter could have no influence in the election on the score of the negroes. The substitution of electors obviated this difficulty, and seemed on the whole to be liable to fewest objections.

Gerry: If the executive is to be elected by the legislature, he certainly ought not to be re-eligible. This would make him absolutely dependent. He was against a popular election. The people are uninformed, and would be misled by a few designing men. He urged the expediency of an appointment of the executive by electors to be chosen by the state executives. The people of the states will then choose the first branch; the legis-

latures of the states, the second branch of the national legislature; and the executives of the states, the national executive. This he thought would form a strong attachment in the states to the national system. The popular mode of electing the chief magistrate would certainly be the worst of all. If he should be so elected, and should do his duty, he will be turned out for it, like Governor Bowdoin in Massachusetts, and President Sullivan in New Hampshire.

On the question on G. Morris's motion, to reconsider generally the constitution of the executive: Massachusetts, Connecticut, New Jersey, and all the others, aye.

Ellsworth: Moved to strike out the appointment by the national legislature, and to insert "to be chosen by electors, appointed by the legislatures of the states in the following ratio; to wit: one for each state not exceeding two hundred thousand inhabitants; two for each above that number and not exceeding three hundred thousand; and three for each state exceeding three hundred thousand."

Broom: Seconded the motion.

Rutledge: Was opposed to all the modes except the appointment by the national legislature. He will be sufficiently independent, if he be not re-eligible.

Gerry: Preferred the motion of Mr. Ellsworth to an appointment by the national legislature, or by the people, though not to an appointment by the state executives. He moved that the electors proposed by Mr. Ellsworth should be twenty-five in number and allotted in the following proportion: to New Hampshire, one; to Massachusetts, three; to Rhode Island, one; to Connecticut, two; to New York, two; to New Jersey, two; to Pennsylvania, three; to Delaware, one; to Maryland, two; to Virginia, three; to North Carolina, two; to South Carolina, two; to Georgia, one.

The question, as moved by Ellsworth, being divided, on the first part, "Shall the national executive be appointed by electors?": Yeas 6 (Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia); nays 3 (North Carolina, South Carolina, Georgia); divided 1 (Massachusetts).

On the second part, "Shall the electors be chosen by the state legislatures?": Yeas 8 (Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, North Carolina, Georgia); nays 2 (Virginia, South Carolina).

The part relating to the ratio in which the states should choose electors was postponed, *nem. con.*

L. Martin: Moved that the executive be ineligible a second time.

Williamson: Seconds the motion. He had no great confidence in electors to be chosen for the special purpose. They would not be the most respectable citizens, but persons not occupied in the high offices of government. They would be liable to undue influence, which might the more readily be practiced, as some of them will probably be in appointment six or eight months before the object of it comes on.

Ellsworth: Supposed any persons might be appointed electors except, solely, members of the national legislature.

On the question, "Shall he be ineligible a second time?": Yeas 2 (North Carolina, South Carolina); nays 8 (Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, Georgia).

On the question, "Shall the executive continue for seven years?" it passed in the negative: Yeas 3 (Connecticut, South Carolina, Georgia); nays 5 (New Jersey, Pennsylvania, Delaware, Maryland, Virginia); divided 2 (Massachusetts, North Carolina).

King: Was afraid we should shorten the term too much.

G. Morris: Was for a short term, in order to avoid impeachments, which would be otherwise necessary.

Butler: Was against the frequency of the elections. Georgia and South Carolina were too distant to send electors often.

Ellsworth: Was for six years. If the elections be too frequent, the executive will not be firm enough. There must be duties which will make him unpopular for the moment. There will be *outs* as well as *ins*. His administration, therefore, will be attacked and misrepresented.

Williamson: Was for six years. The expense will be considerable, and ought not to be unnecessarily repeated. If the elec-

tions are too frequent, the best men will not undertake the service, and those of an inferior character will be liable to be corrupted.

On the question of six years: Yeas 9 (Massachusetts, Connecticut, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia); nays 1 (Delaware).

July 20

The proposed ratio of electors for appointing the executive, to wit: one for each state whose inhabitants do not exceed two hundred thousand, etc., being taken up—

Madison: Observed that this would make, in time, all or nearly all of the states equal, since there were few that would not in time contain the number of inhabitants entitling them to three electors; that this ratio ought either to be made temporary, or so varied as that it would adjust itself to the growing population of the states.

Gerry: Moved that in the *first instance* the electors should be allotted to the states in the following ratio: to New Hampshire, one; Massachusetts, three; Rhode Island, one; Connecticut, two; New York, two; New Jersey, two; Pennsylvania, three; Delaware, one; Maryland, two; Virginia, three; North Carolina, two; South Carolina, two; Georgia, one.

On the question to postpone in order to take up this motion of Gerry, it passed in the affirmative: Yeas 6 (Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia); nays 4 (Connecticut, New Jersey, Delaware, Maryland).

Ellsworth: Moved that two electors be allotted to New Hampshire. Some rule ought to be pursued; and New Hampshire has more than a hundred thousand inhabitants. He thought it would be proper also to allot two to Georgia.

Broom and L. Martin: Moved to postpone Mr. Gerry's allotment of electors, leaving a fit ratio to be reported by the committee to be appointed for detailing the resolutions.

On this motion: Yeas 3 (New Jersey, Delaware, Maryland); nays 7 (Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia).

Houston: Seconded the motion of Mr. Ellsworth to add another elector to New Hampshire and Georgia.

On the question: Yeas 3 (Connecticut, South Carolina, Georgia); nays 7 (Massachusetts, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina).

Williamson: Moved as an amendment to Mr. Gerry's allotment of electors, in the first instance, that in future elections of the national executive, the number of electors to be appointed by the several states shall be regulated by their respective numbers of representatives in the first branch, pursuing as nearly as may be the present proportions.

On the question of Gerry's ratio of electors: Yeas 6 (Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, South Carolina); nays 4 (New Jersey, Delaware, Maryland, Georgia).

Gerry and G. Morris: Moved "that the electors of the executive shall not be members of the national legislature, nor officers of the United States, nor shall the electors themselves be eligible to the supreme magistracy."

Agreed to, *nem. con.*

Williamson: Moved "that the electors of the executive should be paid out of the national treasury for the service to be performed by them." Justice required this, as it was a national service they were to render. The motion was agreed to, *nem. con.* July 21

Houston and Spaight: Moved "that the appointment of the executive by electors chosen by the legislatures of the states" be reconsidered. July 23

Houston: Urged the extreme inconveniency and the considerable expense of drawing together men from all the states for the single purpose of electing the chief magistrate.

On the question, which was put without debate: Yeas 7 (New Hampshire, Massachusetts, Connecticut, Delaware, North Carolina, South Carolina, Georgia); nays 3 (Pennsylvania, Maryland, Virginia).



July 24     The appointment of the executive by electors being reconsidered:

Houston: Moved that he be appointed by the national legislature instead of "electors appointed by the state legislatures," according to the last decision of the mode. He dwelt chiefly on the improbability that capable men would undertake the service of electors from the more distant states.

Spaight: Seconded the motion.

Gerry: Opposed it. He thought there was no ground to apprehend the danger urged by Mr. Houston. The election of the executive magistrate will be considered as of vast importance and will create great earnestness. The best men, the governors of the states, will not hold it derogatory from their character to be the electors. If the motion should be agreed to, it will be necessary to make the executive ineligible a second time, in order to render him independent of the legislature; which was an idea extremely repugnant to his way of thinking.

Strong: Supposed that there would be no necessity, if the executive should be appointed by the legislature, to make him ineligible a second time, as new elections of the legislature will have intervened; and he will not depend for his second appointment on the same set of men that his first was received from. It had been suggested that *gratitude* for his past appointment would produce the same effect as dependence for his future appointment. He thought very differently. Besides, this objection would lie against the electors, who would be objects of gratitude as well as the legislature. It was of great importance not to make the government too complex, which would be the case if a new set of men, like the electors, should be introduced into it. He thought, also, that the first characters in the states would not feel sufficient motives to undertake the office of electors.

Williamson: Was for going back to the original ground, to elect the executive for seven years, and render him ineligible a second time. The proposed electors would certainly not be men of the first, nor even of the second, grade in the states. These would all prefer a seat in the Senate or the other branch

of the legislature. He did not like the unity in the executive. He had wished the executive power to be lodged in three men, taken from three districts, into which the states should be divided. As the executive is to have a kind of veto on the laws, and there is an essential difference of interest between the northern and southern states, particularly in the carrying trade, the power will be dangerous if the executive is to be taken from part of the Union to the part from which he is not taken. The case is different here from what it is in England, where there is a sameness of interests throughout the kingdom. Another objection against a single magistrate is that he will be an elective king, and will feel the spirit of one. He will spare no pains to keep himself in for life, and will then lay a train for the succession of his children. It was pretty certain he thought that we should at some time or other have a king; but he wished no precaution to be omitted that might postpone the event as long as possible. Ineligibility a second time appeared to him to be the best precaution. With this precaution he had no objection to a longer term than seven years. He would go as far as ten or twelve years.

Gerry: Moved that the legislatures of the states should vote by ballot for the executive, in the same proportions as it had been proposed they should choose electors; and that in case a majority of the votes should not center on the same person, the first branch of the national legislature should choose two out of the four candidates having most votes, and out of these two, the second branch should choose the executive.

King: Seconded the motion; and on the question to postpone, in order to take it into consideration, the noes were so predominant that the states were not counted.

On the question of Houston's motion that the executive be appointed by the national legislature: Yeas 7 (New Hampshire, Massachusetts, New Jersey, Delaware, North Carolina, South Carolina, Georgia); nays 4 (Connecticut, Pennsylvania, Maryland, Virginia).

L. Martin and Gerry: Moved to reinstate the ineligibility of the executive a second time.

Ellsworth: With many this appears a natural consequence of his being elected by the legislature. It was not the case with him. The executive he thought should be re-elected if his conduct proved him worthy of it. And he will be more likely to render himself worthy of it if he be rewardable with it. The most eminent characters, also, will be more willing to accept the trust under this condition than if they foresee a necessary degradation at a fixed period.

Gerry: That the executive should be independent of the legislature is a clear point. The longer the duration of his appointment, the more will his dependence be diminished. It will be better, then, for him to continue ten, fifteen, or even twenty years, and be ineligible afterwards.

King: Was for making him re-eligible. This is too great an advantage to be given up, for the small effect it will have on his dependence, if impeachments are to lie. He considered these as rendering the tenure during pleasure.

L. Martin: Suspended his motion as to the ineligibility, moved "that the appointment of the executive shall continue for eleven years."

Gerry: Suggested fifteen years.

King: Twenty years.<sup>5</sup> This is the medium life of princes.

Davie: Eight years.

Wilson: The difficulties and perplexities into which the House is thrown proceed from the election by the legislature, which he was sorry had been reinstated. The inconvenience of this mode was such that he would agree to almost any length of time in order to get rid of the dependence which must result from it. He was persuaded that the longest term would not be equivalent to a proper mode of election, unless indeed it should be during good behavior. It seemed to be supposed that at a certain advance of life a continuance in office would cease to be agreeable to the officer as well as desirable to the public. Experience had shown in a variety of instances that both a capacity and inclination for public service existed in

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<sup>5</sup> This might possibly be meant as a caricature of the previous motions, in order to defeat the object of them.

very advanced stages. He mentioned the instance of a Doge of Venice who was elected after he was eighty years of age. The popes have generally been elected at very advanced periods, and yet in no case had a more steady or a better concerted policy been pursued than in the Court of Rome. If the executive should come into office at thirty-five years of age, which he presumes may happen, and his continuance should be fixed at fifteen years, at the age of fifty, in the very prime of life, and with all the aid of experience, he must be cast aside like a useless hulk. What an irreparable loss would the British jurisprudence have sustained had the age of fifty been fixed there as the ultimate limit of capacity or readiness to serve the public. The great luminary, Lord Mansfield, held his seat for thirty years after his arrival at that age. Notwithstanding what had been done, he could not but hope that a better mode of election would yet be adopted; and one that would be more agreeable to the general sense of the House. That time might be given for further deliberation, he would move that the present question be postponed till tomorrow.

Broom: Seconded the motion to postpone.

Gerry: We seem to be entirely at a loss on this head. He would suggest whether it would not be advisable to refer the clause relating to the executive to the committee of detail to be appointed. Perhaps they will be able to hit on something that may unite the various opinions which have been thrown out.

Wilson: As the great difficulty seems to spring from the mode of election, he would suggest a mode which had not been mentioned. It was that the executive be elected for six years by a small number, not more than fifteen of the national legislature, to be drawn from it, not by ballot, but by lot, and who should retire immediately and make the election without separating. By this mode intrigue would be avoided in the first instance, and the dependence would be diminished. This was not, he said, a digested idea, and might be liable to strong objections.

G. Morris: Of all possible modes of appointment, that by legislature is the worst. If the legislature is to appoint, and to im-

peach, or to influence the impeachment, the executive will be the mere creature of it. He had been opposed to the impeachment, but was now convinced that impeachments must be provided for, if the appointment was to be of any duration. No man would say that an executive known to be in the pay of an enemy should not be removable in some way or other. He had been charged heretofore (by Col. Mason) with inconsistency in pleading for confidence in the legislature on some occasions and urging a distrust on others. The charge was not well founded. The legislature is worthy of unbounded confidence, in some respects and liable to equal distrust in others. When their interest coincides precisely with that of their constituents, as happens in many of their acts, no abuse of trust is to be apprehended. When a strong personal interest happens to be opposed to the general interest, the legislature cannot be too much distrusted. In all public bodies there are two parties. The executive will necessarily be more connected with one than with the other. There will be a personal interest, therefore, in one of the parties to oppose, as well as in the other to support, him. Much had been said of the intrigues that will be practiced by the executive to get into office. Nothing had been said on the other side, of the intrigues to get him out of office. Some leader of a party will always covet his seat, will perplex his administration, will cabal with the legislature, till he succeeds in supplanting him. This was the way in which the King of England was got out, he meant the real king, the minister. This was the way in which Pitt (Lord Chatham) forced himself into place. Fox was for pushing the matter still further. If he had carried his India bill, which he was very near doing, he would have made the minister the king in form almost, as well as in substance. Our President will be the British minister, yet we are about to make him appointable by the legislature. Something has been said of the danger of monarchy. If a good government should not now be formed, if a good organization of the executive should not be provided, he doubted whether we should not have something worse than a limited monarchy. In order to get rid of the

dependence of the executive upon the legislature, the expedient of making him ineligible a second time had been devised. This was as much as to say, we should give him the benefit of experience and then deprive ourselves of the use of it. But make him ineligible a second time—and prolong his duration even to fifteen years—will he, by any wonderful interposition of Providence at that period cease to be a man? No; he will be unwilling to quit his exaltation; the road to his object through the Constitution will be shut; he will be in possession of the sword; a civil war will ensue, and the commander of the victorious army, on which ever side, will be the despot of America. This consideration renders him particularly anxious that the executive should be properly constituted. The vice here would not, as in some other parts of the system, be curable. It is the most difficult of all rightly to balance the executive. Make him too weak—the legislature will usurp his power. Make him too strong—he will usurp on the legislature. He preferred a short period, a re-eligibility, but a different mode of election. A long period would prevent an adoption of the plan. It ought to do so. He should himself be afraid to trust it. He was not prepared to decide on Mr. Wilson's mode of election just hinted by him. He thought it deserved consideration. It would be better that chance should decide than intrigue.

On the question to postpone the consideration of the resolution on the subject of the executive: Yeas 4 (Connecticut, Pennsylvania, Maryland, Virginia); nays 6 (New Hampshire, Massachusetts, New Jersey, North Carolina, South Carolina, Georgia); divided 1 (Delaware).

Wilson: Then moved that the executive be chosen every —— years by —— electors, to be taken by lot from the national legislature, who shall proceed immediately to the choice of the executive, and not separate until it be made.

Carroll: Seconds the motion.

Gerry: This is committing too much to chance. If the lot should fall on a set of unworthy men, an unworthy executive must be saddled on the country. He thought it had been demon-

strated that no possible mode of electing by the legislature could be a good one.

King: The lot might fall on a majority from the same state, which would ensure the election of a man from that state. We ought to be governed by reason, not by chance. As nobody seemed to be satisfied, he wished the matter to be postponed.

Wilson: Did not move this as the best mode. His opinion remained unshaken, that we ought to resort to the people for the election. He seconded the postponement.

G. Morris: Observed that the chances were almost infinite against a majority of electors from the same state.

On a question whether the last motion was in order, it was determined in the affirmative: Yeas 7; nays 4.

On the question of postponement, it was agreed to, *nem. con.*

July 25

The clause relating to the executive being again under consideration:

Ellsworth: Moved "that the executive be appointed by the legislature, except when the magistrate last chosen shall have continued in office the whole term for which he was chosen, and be re-eligible; in which case the choice shall be by electors appointed by the legislatures of the states for that purpose." By this means a deserving magistrate may be re-elected without *making him dependent on the legislature.*

Gerry: Repeated his remark that an election at all by the national legislature was radically and incurably wrong; and moved "that the executive be appointed by the governors and presidents of the states, with advice of their councils, and where there are no councils, by electors chosen by the legislatures. The executives to vote in the following proportions, viz.: ———."

Madison: There are objections against every mode that has been, or perhaps can be, proposed. The election must be made, either by some existing authority under the national or state constitutions—or by some special authority derived from the people—or by the people themselves. The two existing authorities under the national Constitution would be the legislative and judiciary. The latter he presumed was out of the ques-

tion. The former was, in his judgment, liable to insuperable objections. Besides the general influence of that mode on the independence of the executive, in the first place, the election of the chief magistrate would agitate and divide the legislature so much that the public interest would materially suffer by it. Public bodies are always apt to be thrown into contentions, but into more violent ones by such occasions than by any others. In the second place, the candidate would intrigue with the legislature; would derive his appointment from the predominant faction, and be apt to render his administration subservient to its views. In the third place, the ministers of foreign powers would have and would make use of the opportunity to mix their intrigues and influence with the election. Limited as the powers of the executive are, it will be an object of great moment with the great rival powers of Europe who have American possessions, to have at the head of our government a man attached to their respective politics and interests. No pains, nor perhaps expense, will be spared, to gain from the legislature an appointment favorable to their wishes. Germany and Poland are witnesses of this danger. In the former, the election of the head of the empire, till it became in a manner hereditary, interested all Europe, and was much influenced by foreign interference. In the latter, although the elective magistrate has very little real power, his election has at all times produced the most eager interference of foreign princes and has in fact at length slid entirely into foreign hands. The existing authorities in the states are the legislative, executive, and judiciary. The appointment of the national executive by the first was objectionable in many points of view, some of which had been already mentioned. He would mention one which of itself would decide his opinion. The legislatures of the states had betrayed a strong propensity to a variety of pernicious measures. One object of the national legislature was to control this propensity. One object of the national executive, so far as it would have a negative on the laws, was to control the national legislature, so far as it might be infected with a similar propensity. Refer the ap-



pointment of the national executive to the state legislatures, and this controlling purpose may be defeated. The legislatures can and will act with some kind of regular plan, and will promote the appointment of a man who will not oppose himself to a favorite object. Should a majority of the legislatures, at the time of election, have the same object, or different objects of the same kind, the national executive would be rendered subservient to them. An appointment by the state executives was liable, among other objections, to this insuperable one, that being standing bodies, they could and would be courted, and intrigued with by the candidates, by their partisans, and by the ministers of foreign powers. The state judiciaries had not been, and he presumed would not be, proposed as a proper source of appointment. The option before us, then, lay between an appointment by electors chosen by the people and an immediate appointment by the people. He thought the former mode free from many of the objections which had been urged against it, and greatly preferable to an appointment by the national legislature. As the electors would be chosen for the occasion, would meet at once, and proceed immediately to an appointment, there would be very little opportunity for cabal or corruption: as a further precaution, it might be required that they should meet at some place distinct from the seat of government; and even that no person within a certain distance of the place at the time should be eligible. This mode, however, had been rejected so recently and by so great a majority that it probably would not be proposed anew. The remaining mode was an election by the people, or rather by the qualified part of them at large. With all its imperfections, he liked this best. He would not repeat either the general arguments for or the objections against this mode. He would only take notice of two difficulties, which he admitted to have weight. The first arose from the disposition in the people to prefer a citizen of their own state and the disadvantage this would throw on the smaller states. Great as this objection might be, he did not think it equal to such as lay against every other mode which had been proposed. He

thought, too, that some expedient might be hit upon that would obviate it. The second difficulty arose from the disproportion of qualified voters in the northern and southern states, and the disadvantages which this mode would throw on the latter. The answer to this objection was—in the first place, that this disproportion would be continually decreasing under the influence of the republican laws introduced in the southern states, and the more rapid increase of their population; in the second place, that local considerations must give way to the general interest. As an individual from the southern states, he was willing to make the sacrifice.

Ellsworth: The objection drawn from the different sizes of the states is unanswerable. The citizens of the largest states would invariably prefer the candidate within the state; and the largest states would invariably have the man.

On the question on Ellsworth's motion, as above: Yeas 4 (New Hampshire, Connecticut, Pennsylvania, Maryland); nays 7 (Massachusetts, New Jersey, Delaware, Virginia, North Carolina, South Carolina, Georgia).

C. Pinckney: Moved "that the election by the legislature be qualified with a proviso that no person be eligible for more than six years in any twelve years." He thought this would have all the advantage, and at the same time avoid in some degree the inconvenience of an absolute ineligibility a second time.

Mason: Approved the idea. It had the sanction of experience in the instance of Congress and some of the executives of the states. It rendered the executive as effectually independent, as an ineligibility after his first election; and opened the way, at the same time, for the advantage of his future services. He preferred on the whole the election by the national legislature; though candor obliged him to admit that there was great danger of foreign influence, as had been suggested. This was the most serious objection, with him, that had been urged.

Butler: The two great evils to be avoided are cabal at home and influence from abroad. It will be difficult to avoid either, if the election be made by the national legislature. On the other

hand, the government should not be made so complex and unwieldy as to disgust the states. This would be the case if the election should be referred to the people. He liked best an election by electors chosen by the legislatures of the states. He was against a re-eligibility at all events. He was also against a ratio of votes in the states. An equality should prevail in this case. The reasons for departing from it do not hold in the case of the executive as in that of the legislature.

Gerry: Approved of Mr. Pinckney's motion, as lessening the evil.

G. Morris: Was against a rotation in every case. It formed a political school, in which we were always governed by the scholars, and not by the masters. The evils to be guarded against in this case are—first, the undue influence of the legislature; secondly, instability of councils; thirdly, misconduct in office. To guard against the first, we run into the second evil. We adopt a rotation which produces instability of councils. To avoid Scylla we fall into Charybdis. A change of men is ever followed by a change of measures. We see this fully exemplified in the vicissitudes among ourselves, particularly in the state of Pennsylvania. The self-sufficiency of a victorious party scorns to tread in the paths of their predecessors. Rehoboam will not imitate Solomon. Secondly, the rotation in office will not prevent intrigue and dependence on the legislature. The man in office will look forward to the period at which he will become re-eligible. The distance of the period, the improbability of such a protraction of his life will be no obstacle. Such is the nature of man—formed by his benevolent Author, no doubt, for wise ends—that although he knows his existence to be limited to a span, he takes his measures as if he were to live forever. But taking another supposition, the inefficacy of the expedient will be manifest. If the magistrate does not look forward to his re-election to the executive, he will be pretty sure to keep in view the opportunity of his going into the legislature itself. He will have little objection then to an extension of power on a theatre where he expects to act a distinguished part; and will be very unwilling to take any

step that may endanger his popularity with the legislature, on his influence over which the figure he is to make will depend. Finally, to avoid the third evil, impeachments will be essential; and hence an additional reason against an election by the legislature. He considered an election by the people as the best, by the legislature as the worst mode. Putting both these aside, he could not but favor the idea of Mr. Wilson of introducing a mixture of lot. It will diminish, if not destroy, both cabal and dependence.

Williamson: Was sensible that strong objections lay against an election of the executive by the legislature, and that it opened a door for foreign influence. The principal objection against an election by the people seemed to be the disadvantage under which it would place the smaller states. He suggested as a cure for this difficulty that each man should vote for three candidates; one of them, he observed, would be probably of his own state, the other two of some other states, and as probably of a small as a large one.

G. Morris: Liked the idea; suggesting as an amendment that each man should vote for two persons, one of whom at least should not be of his own state.

Madison: Also thought something valuable might be made of the suggestion, with the proposed amendment of it. The second best man in this case would probably be the first in fact. The only objection which occurred was that each citizen, after having given his vote for his favorite fellow citizen, would throw away his second on some obscure citizen of another state, in order to ensure the object of his first choice. But it could hardly be supposed that the citizens of many states would be so sanguine of having their favorite elected as not to give their second vote with sincerity to the next object of their choice. It might, moreover, be provided, in favor of the smaller states, that the executive should not be eligible more than ——— times in ——— years from the same state.

Gerry: A popular election in this case is radically vicious. The ignorance of the people would put it in the power of some one

set of men dispersed through the Union, and acting in concert, to delude them into any appointment. He observed that such a society of men existed in the Order of the Cincinnati. They are respectable, united and influential. They will, in fact, elect the chief magistrate in every instance, if the election be referred to the people. His respect for the characters composing this society could not blind him to the danger and impropriety of throwing such a power into their hands.

Dickinson: As far as he could judge from the discussions which had taken place during his attendance, insuperable objections lay against an election of the executive by the national legislature; as also by the legislatures or executives of the states. He had long leaned towards an election by the people, which he regarded as the best and purest source. Objections he was aware lay against this mode, but not so great, he thought, as against the other modes. The greatest difficulty, in the opinion of the House, seemed to arise from the partiality of the states to their respective citizens. But might not this very partiality be turned to a useful purpose? Let the people of each state choose its best citizen. The people will know the most eminent characters of their own states; and the people of different states will feel an emulation in selecting those of whom they will have the greatest reason to be proud. Out of the thirteen names thus selected, an executive magistrate may be chosen either by the national legislature, or by electors appointed by it.

On a question which was moved, for postponing C. Pinckney's motion, in order to make way for some such proposition as had been hinted by Williamson and others, it passed in the negative: Yeas 5 (Connecticut, New Jersey, Pennsylvania, Maryland, Virginia); nays 6 (New Hampshire, Massachusetts, Delaware, North Carolina, South Carolina, Georgia).

On C. Pinckney's motion, that no person shall serve in the executive more than six years in twelve years, it passed in the negative: Yeas 5 (New Hampshire, Massachusetts, North Carolina, South Carolina, Georgia); nays 6 (Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia).

Gerry and Butler: Moved to refer the resolution relating to the executive (except the clause making it consist of a single person) to the Committee of Detail.

Wilson: Hoped that so important a branch of the system would not be committed until a general principle should be fixed by a vote of the House.

Langdon: Was for the commitment.

Mason: In every stage of the question relative to the executive, *July 26* the difficulty of the subject and the diversity of the opinions concerning it have appeared. Nor have any of the modes of constituting that department been satisfactory. First, it has been proposed that the election should be made by the people at large; that is, that an act which ought to be performed by those who know most of eminent characters and qualifications should be performed by those who know least; secondly, that the election should be made by the legislatures of the states; thirdly, by the executives of the states. Against these modes, also, strong objections have been urged. Fourthly, it has been proposed that the election should be made by electors chosen by the people for that purpose. This was at first agreed to; but on further consideration has been rejected. Fifthly, since which, the mode of Mr. Williamson, requiring each freeholder to vote for several candidates, has been proposed. This seemed, like many other propositions, to carry a plausible face, but on closer inspection is liable to fatal objections. A popular election in any form, as Mr. Gerry has observed, would throw the appointment into the hands of the Cincinnati, a society for the members of which he had a great respect, but which he never wished to have a preponderating influence in the government. Sixthly, another expedient was proposed by Mr. Dickinson, which is liable to so palpable and material an inconvenience that he had little doubt of its being by this time rejected by himself. It would exclude every man who happened not to be popular within his own state, though the causes of his local unpopularity might be of such a nature as to recommend him to the states at large. Seventhly, among other expedients, a lottery has been introduced. But as the

tickets do not appear to be in much demand, it will probably not be carried on, and nothing therefore need be said on that subject. After reviewing all these various modes, he was led to conclude that an election by the national legislature, as originally proposed, was the best. If it was liable to objections, it was liable to fewer than any other. He conceived at the same time that a second election ought to be absolutely prohibited. Having for his primary object—for the polar star of his political conduct—the preservation of the rights of the people, he held it as an essential point, as the very palladium of civil liberty, that the great officers of state and particularly the executive should at fixed periods return to that mass from which they were at first taken, in order that they may feel and respect those rights and interests which are again to be personally valuable to them. He concluded with moving that the constitution of the executive, as reported by the Committee of the Whole, be reinstated, viz., “that the executive be appointed for seven years, and be ineligible a second time.”

Davie: Seconded the motion.

Franklin: It seems to have been imagined by some that the returning to the mass of the people was degrading the magistrate. This he thought was contrary to republican principles. In free governments, the rulers are the servants, and the people their superiors and sovereigns. For the former, therefore, to return among the latter was not to *degrade*, but to *promote* them. And it would be imposing an unreasonable burden on them to keep them always in a state of servitude and not allow them to become again one of the masters.

On the question of Mason's motion, as above, it passed in the affirmative: Yeas 7 (New Hampshire, New Jersey, Maryland, Virginia, North Carolina, South Carolina, Georgia); nays 3 (Connecticut, Pennsylvania, Delaware); absent 1 (Massachusetts).

G. Morris: Was now against the whole paragraph. In answer to Col. Mason's position, that a periodical return of the great officers of the state into the mass of the people was the palladium of civil liberty, he would observe that on the same prin-

ciple the judiciary ought to be periodically degraded; certain it was that the legislature ought, on every principle, yet no one had proposed, or conceived that the members of it should not be re-eligible. In answer to Dr. Franklin that a return into the mass of the people would be a promotion instead of a degradation, he had no doubt that our executive, like most others, would have too much patriotism to shrink from the burden of his office and too much modesty not to be willing to decline the promotion.

#### COMPENSATION OF THE FEDERAL EXECUTIVE

**Preliminaries in Committee of the Whole.** Resolved, that a national executive . . . receive punctually, at stated times, a fixed compensation for the services rendered, in which no increase nor diminution shall be made, so as to affect the magistracy existing at the time of increase or diminution. . . . Proposition in Virginia Plan. *May 29*

Franklin: Moved that what related to the compensation for the services of the executive be postponed in order to substitute "whose necessary expenses shall be defrayed, but who shall receive no salary, stipend, fee or reward whatsoever for their services." He said that, being very sensible of the effect of age on his memory, he had been unwilling to trust to that for the observations which seemed to support his motion, and had reduced them to writing that he might, with the permission of the Committee, read instead of speaking them. Mr. Wilson made an offer to read the paper, which was accepted. The following is a literal copy of the paper: *June 2*

"Sir, it is with reluctance that I rise to express a disapprobation of any one article of the plan for which we are so much obliged to the honorable gentleman who laid it before us. From its first reading, I have borne a good will to it, and in general wished it success. In this particular of salaries to the executive branch, I happen to differ: and as my opinion may appear new and chimerical, it is only from a persuasion that it is right, and from a sense of duty, that I hazard it. The Com-



mittee will judge of my reasons when they have heard them, and their judgment may possibly change mine. I think I see inconveniences in the appointment of salaries; I see none in refusing them, but, on the contrary, great advantages.

“Sir, there are two passions which have a powerful influence on the affairs of men. These are ambition and avarice; the love of power and the love of money. Separately, each of these has great force in prompting men to action; but when united in view of the same object, they have in many minds the most violent effects. Place before the eyes of such men a post of *honor*, that shall be at the same time a place of *profit*, and they will move heaven and earth to obtain it. The vast number of such places it is that renders the British government so tempestuous. The struggles for them are the true sources of all those factions, which are perpetually dividing the nation, distracting its councils, hurrying sometimes into fruitless and mischievous wars, and often compelling a submission to dishonorable terms of peace.

“And of what kind are the men that will strive for this profitable pre-eminence, through all the bustle of cabal, the heat of contention, the infinite mutual abuse of parties, tearing to pieces the best of characters? It will not be the wise and moderate, the lovers of peace and good order, the men fittest for the trust. It will be the bold and the violent, the men of strong passions and indefatigable activity in their selfish pursuits. These will thrust themselves into your government, and be your rulers. And these, too, will be mistaken in the expected happiness of their situation: for their vanquished competitors, of the same spirit, and from the same motives, will perpetually be endeavoring to distress their administration, thwart their measures, and render them odious to the people.

“Besides these evils, sir, though we may set out in the beginning with moderate salaries, we shall find that such will not be of long continuance. Reasons will never be wanting for proposed augmentations. And there will always be a party for giving more to the rulers that the rulers may be able in return to give more to them. Hence, as all history informs us,

there has been in every state and kingdom a constant kind of warfare between the governing and governed, the one striving to obtain more for its support and the other to pay less. And this has alone occasioned great convulsions, actual civil wars, ending either in dethroning of the princes or enslaving of the people. Generally, indeed, the ruling power carries its point, the revenues of princes constantly increasing; and we see that they are never satisfied, but always in want of more. The more the people are discontented with the oppression of taxes, the greater need the prince has of money to distribute among his partisans, and pay the troops that are to suppress all resistance, and enable him to plunder at pleasure. There is scarce a king in an hundred who would not, if he could, follow the example of Pharaoh, get first all the people's money, then all their lands, and then make them and their children servants forever. It will be said that we don't propose to establish kings. I know it; but there is a natural inclination in mankind to kingly government. It sometimes relieves them from aristocratic domination. They had rather have one tyrant than five hundred. It gives more of the appearance of equality among citizens, and that they like. I am apprehensive, therefore, perhaps too apprehensive, that the government of these states may in future times end in a monarchy. But this catastrophe I think may be delayed if in our proposed system we do not sow the seeds of contention, faction, and tumult, by making our posts of honor places of profit. If we do, I fear that, though we do employ at first a number, and not a single person, the number will in time be set aside; it will only nourish the foetus of a king, as the honorable gentleman from Virginia very aptly expressed it, and a king will the sooner be set over us.

"It may be imagined by some that this is a Utopian idea, and that we can never find men to serve us in the executive department without paying them well for their services. I conceive this to be a mistake. Some existing facts present themselves to me which incline me to a contrary opinion. The high sheriff of a county in England is an honorable office, but it is not a profitable one. It is rather expensive and therefore not

sought for. But yet, it is executed and well executed, and usually by some of the principal gentlemen of the county. In France, the office of counsellor, or member of their judiciary parliament, is more honorable. It is therefore purchased at a high price: there are indeed fees on the law proceedings, which are divided among them, but these fees do not amount to more than 3 per cent on the sum paid for the place. Therefore, as legal interest is there at five per cent, they in fact pay 2 per cent for being allowed to do the judiciary business of the nation, which is at the same time entirely exempt from the burden of paying them any salaries for their services. I do not, however, mean to recommend this as an eligible mode for our judiciary department. I only bring the instance to show that the pleasure of doing good and serving their country, and the respect such conduct entitles them to, are sufficient motives with some minds to give up a great portion of their time to the public, without the mean inducement of pecuniary satisfaction.

“Another instance is that of a respectable society who have made the experiment, and practiced it with success more than one hundred years. I mean the Quakers. It is an established rule with them that they are not to go to law; but in their controversies they must apply to their monthly, quarterly, and yearly meetings. Committees of these sit with patience to hear the parties, and spend much time in composing their differences. In doing this, they are supported by a sense of duty, and the respect paid to usefulness. It is honorable to be so employed, but it is never made profitable by salaries, fees or perquisites. And, indeed, in all cases of public service, the less the profit the greater the honor.

“To bring the matter nearer home, have we not seen the great and most important of our offices, that of general of our armies, executed for eight years together without the smallest salary, by a patriot whom I will not now offend by any other praise; and this, through fatigues and distresses, in common with the other brave men, his military friends and companions, and the constant anxieties peculiar to his station? And shall we

doubt finding three or four men in all the United States, with public spirit enough to bear sitting in peaceful council for perhaps an equal term, merely to preside over our civil concerns, and see that our laws are duly executed? Sir, I have a better opinion of our country. I think we shall never be without a sufficient number of wise and good men to undertake and execute well and faithfully the office in question.

"Sir, the saving of the salaries that may at first be proposed is not an object with me. The subsequent mischiefs of proposing them are what I apprehend. And therefore it is that I move the amendment. If it is not seconded or accepted, I must be contented with the satisfaction of having delivered my opinion frankly and done my duty."

The motion was seconded by Hamilton, with the view, he said, merely of bringing so respectable a proposition before the Committee, and which was besides enforced by arguments that had a certain degree of weight. No debate ensued, and the proposition was postponed for the consideration of the members. It was treated with great respect but rather for the author of it than from any apparent conviction of its expediency or practicability.

**Fundamentals in Convention.** Resolved, that a national executive . . . receive a fixed stipend by which he may be compensated for the devotion of his time to the public service, to be paid out of the national treasury. Ninth resolution, Committee of the Whole.

*June 19*

"The executive to receive fixed compensation"—agreed to, *nem. con.*

*July 20*

"To be paid out of the national treasury"—agreed to, New Jersey only in the negative.

#### COUNCIL OF REVISION

**Preliminaries in Committee of the Whole.** Resolved, that the executive and a convenient number of the national judiciary ought to compose a Council of Revision, with authority to examine every act of the national legislature before it shall

*May 29*

operate and every act of a particular legislature before a negative thereon shall be final; and that the dissent of the said council shall amount to a rejection, unless the act of the national legislature be again passed, or that of a particular legislature be again negatived by —— of the members of each branch. Proposition in Virginia Plan.

*June 4*

Gerry: Doubts whether the judiciary ought to form a part of it, as they will have a sufficient check against encroachments of their own department by their exposition of the laws, which involved a power of deciding on their constitutionality. In some states the judges had actually set aside laws, as being against the constitution. This was done, too, with general approbation. It was quite foreign from the nature of their office to make them judges of the policy of public measures. He moves to postpone the clause in order to propose, "that the national executive shall have a right to negative any legislative act, which shall not be afterwards passed by —— parts of each branch of the national legislature."

King: Seconded the motion, observing that the judges ought to be able to expound the law, as it should come before them, free from the bias of having participated in its formation.

Wilson: Thinks neither the original proposition nor the amendment goes far enough. If the legislative, executive, and judiciary ought to be distinct and independent, the executive ought to have an absolute negative. Without such a self-defense, the legislature can at any moment sink it into non-existence. He was for varying the proposition, in such a manner as to give the executive and judiciary jointly an absolute negative.

On the question to postpone, in order to take Gerry's proposition into consideration, it was agreed to: Yeas 6 (Massachusetts, New York, Pennsylvania, North Carolina, South Carolina, Georgia); nays 4 (Connecticut, Delaware, Maryland, Virginia).

Wilson and Hamilton: Moved that the last part of it (viz., "which shall not be afterwards passed by —— parts of each branch of the national legislature") be struck out, so as to give the executive an absolute negative on the laws. There was no

danger, they thought, of such a power being too much exercised. It was mentioned by Col. Hamilton that the King of Great Britain had not exerted his negative since the Revolution.

Gerry: Sees no necessity for so great a control over the legislature, as the best men in the community would be comprised in the two branches of it.

Franklin: Said he was sorry to differ from his colleague, for whom he had a very great respect, on any occasion, but he could not help it on this. He had had some experience of this check in the executive on the legislature, under the proprietary government of Pennsylvania. The negative of the governor was constantly made use of to extort money. No good law whatever could be passed without a private bargain with him. An increase of his salary, or some donation, was always made a condition; till at last it became the regular practice to have orders in his favor on the treasury, presented along with the bills to be signed, so that he might actually receive the former before he should sign the latter. When the Indians were scalping the western people and notice of it arrived, the concurrence of the governor in the means of self-defense could not be got, till it was agreed that his estate should be exempted from taxation: so that the people were to fight for the security of his property whilst he was to bear no share of the burden. This was a mischievous sort of check. If the executive was to have a council, such a power would be less objectionable. It was true, the King of Great Britain had not, as was said, exerted his negative since the Revolution; but that matter was easily explained. The bribes and emoluments now given to the members of parliament rendered it unnecessary, everything being done according to the will of the ministers. He was afraid, if a negative should be given as proposed, that more power and money would be demanded, till at last enough would be got to influence and bribe the legislature into a complete subjection to the will of the executive.

Sherman: Was against enabling any one man to stop the will of the whole. No one man could be found so far above all the rest

in wisdom. He thought we ought to avail ourselves of his wisdom in revising the laws, but not permit him to overrule the decided and cool opinions of the legislature.

Madison: Supposed that, if a proper proportion of each branch should be required to overrule the objections of the executive, it would answer the same purpose as an absolute negative. It would rarely, if ever, happen that the executive, constituted as ours is proposed to be, would have firmness enough to resist the legislature, unless backed by a certain part of the body itself. The King of Great Britain, with all his splendid attributes, would not be able to withstand the unanimous and eager wishes of both houses of Parliament. To give such a prerogative would certainly be obnoxious to the temper of this country—its present temper at least.

Wilson: Believed, as others did, that this power would seldom be used. The legislature would know that such a power existed and would refrain from such laws as it would be sure to defeat. Its silent operation would therefore preserve harmony and prevent mischief. The case of Pennsylvania formerly was very different from its present case. The executive was not then, as now to be, appointed by the people. It will not in this case, as in the one cited, be supported by the head of a great empire, actuated by a different and sometimes opposite interest. The salary, too, is now proposed to be fixed by the Constitution, or, if Dr. Franklin's idea should be adopted, all salary whatever interdicted. The requiring a large proportion of each house to overrule the executive check might do in peaceable times; but there might be tempestuous moments in which animosities may run high between the executive and legislative branches, and in which the former ought to be able to defend itself.

Butler: Had been in favor of a single executive magistrate; but could he have entertained an idea that a complete negative on the laws was to be given him, he certainly should have acted very differently. It had been observed that in all countries the executive power is in a constant course of increase. This was certainly the case in Great Britain. Gentlemen seemed to

think that we had nothing to apprehend from an abuse of the executive power. But why might not a Cataline or a Cromwell arise in this country as well as in others?

Bedford: Was opposed to every check on the legislature, even the Council of Revision first proposed. He thought it would be sufficient to mark out in the Constitution the boundaries to the legislative authority, which would give all the requisite security to the rights of the other departments. The representatives of the people were the best judges of what was for their interest, and ought to be under no external control whatever. The two branches would produce a sufficient control within the legislature itself.

Mason: Observed that a vote had already passed, he found—he was out at the time—for vesting the executive powers in a single person. Among these powers was that of appointing to offices in certain cases. The probable abuses of a negative had been well explained by Dr. Franklin, as proved by experience, the best of all tests. Will not the same door be opened here? The executive may refuse its assent to necessary measures till new appointments shall be referred to him; and, having by degrees engrossed all these into his own hands, the American executive, like the British, will, by bribery and influence, save himself the trouble and odium of exerting his negative afterwards. We are, Mr. Chairman, going very far in this business. We are not indeed constituting a British government, but a more dangerous monarchy, an elective one. We are introducing a new principle into our system, and not necessary, as in the British government, where the executive has greater rights to defend. Do gentlemen mean to pave the way to hereditary monarchy? Do they flatter themselves that the people will ever consent to such an innovation? If they do, I venture to tell them, they are mistaken. The people never will consent. And do gentlemen consider the danger of delay, and the still greater danger of a rejection, not for a moment, but forever, of the plan which shall be proposed to them? Notwithstanding the oppression and injustice experienced among us from democracy, the genius of the people is in favor of it; and the



genius of the people must be consulted. He could not but consider the federal system as in effect dissolved by the appointment of this Convention to devise a better one. And do gentlemen look forward to the dangerous interval between extinction of an old, and the establishment of a new government; and to the scenes of confusion which may ensue? He hoped that nothing like a monarchy would ever be attempted in this country. A hatred to its oppressions had carried the people through the late Revolution. Will it not be enough to enable the executive to suspend offensive laws till they shall be coolly revised, and the objections to them overruled by a greater majority than was required in the first instance? He never could agree to give up all the rights of the people to a single magistrate. If more than one had been fixed on, greater powers might have been entrusted to the executive. He hoped this attempt to give such powers would have its weight hereafter as an argument for increasing the number of the executive.

Franklin: A gentleman from South Carolina (Mr. Butler) a day or two ago called our attention to the case of the United Netherlands. He wished the gentleman had been a little fuller, and had gone back to the original of that government. The people being under great obligations to the Prince of Orange, whose wisdom and bravery had saved them, chose him for the Stadtholder. He did very well. Inconveniences, however, were felt from his powers; which growing more and more oppressive, they were at length set aside. Still, however, there was a party for the Prince of Orange, which descended to his son; who excited insurrections, spilled a great deal of blood, murdered the DeWitts, and got the powers revested in the stadtholder. Afterwards another prince had power to excite insurrections, and make the stadtholdership hereditary. And the present Stadtholder is ready to wade through a bloody civil war to the establishment of a monarchy. Col. Mason had mentioned the circumstance of appointing officers. He knew how that point would be managed. No new appointment would be suffered, as heretofore in Pennsylvania, unless it be

referred to the executive; so that all profitable offices will be at his disposal. The first man put at the helm will be a good one. Nobody knows what sort may come afterwards. The executive will be always increasing here, as elsewhere, till it ends in a monarchy.

On the question for striking out, so as to give the executive an absolute negative: Nays 10 (Massachusetts, Connecticut, New York, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia).

Butler: Moved that the resolution be altered so as to read, "Resolved, that the national executive have a power to suspend any legislative act for the term of ——."

Franklin: Seconded the motion.

Gerry: Observed that the power of suspending might do all the mischief dreaded from the negative of useful laws, without answering the salutary purpose of checking unjust or unwise ones.

On the question for giving this suspending power, all the states were no (Massachusetts, Connecticut, New York, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia).

On a question for enabling "two-thirds" of each branch of the legislature to overrule the provisionary check, it passed in the affirmative, *sub silentio*; and was inserted in the blank of Gerry's motion.

On the question of Gerry's motion, which gave the executive alone, without the judiciary, the revisionary control on the laws, unless overruled by two-thirds of each branch: Yeas 8 (Massachusetts, New York, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia); nays 2 (Connecticut, Maryland).

Wilson: Moved to reconsider the vote excluding the judiciary from a share in the revision of the laws, and to add, after "national executive," the words, "with a convenient number of the national judiciary"; remarking the expediency of reinforcing the executive with the influence of that department. June 6

Madison: Seconded the motion. He observed that the great dif

ficulty in rendering the executive competent to its own defense arose from the nature of republican government, which could not give to an individual citizen that settled pre-eminence in the eyes of the rest, that weight of property, that personal interest against betraying the national interest, which appertain to an hereditary magistrate. In a republic personal merit alone could be the ground of political exaltation; but it would rarely happen that this merit would be so pre-eminent as to produce universal acquiescence. The executive magistrate would be envied and assailed by disappointed competitors: his firmness therefore would need support. He would not possess those great emoluments from his station, nor that permanent stake in the public interest, which would place him out of the reach of foreign corruption. He would stand in need therefore of being controlled as well as supported. An association of the judges in his revisionary function would both double the advantage, and diminish the danger. It would also enable the judiciary department the better to defend itself against legislative encroachments. Two objections had been made—first, that the judges ought not to be subject to the bias which a participation in the making of laws might give in the exposition of them; secondly, that the judiciary department ought to be separate and distinct from the other great departments. The first objection had some weight, but it was much diminished by reflecting that a small proportion of the laws coming in question before a judge would be such wherein he had been consulted; that a small part of this proportion would be so ambiguous as to leave room for his prepossessions; and that but a few cases would probably arise in the life of a judge, under such ambiguous passages. How much good, on the other hand, would proceed from the perspicuity, the conciseness, and the systematic character which the code of laws would receive from the judiciary talents. As to the second objection, it either had no weight, or it applied with equal weight to the executive, and to the judiciary revision of the laws. The maxim on which the objection was founded required a separation of the executive as well as the judiciary

from the legislature and from each other. There would, in truth, however, be no improper mixture of these distinct powers in the present case. In England, whence the maxim itself had been drawn, the executive had an absolute negative on the laws; and the supreme tribunal of justice (the House of Lords), formed one of the other branches of the legislature. In short, whether the object of the revisionary power was to restrain the legislature from encroaching on the other co-ordinate departments, or on the rights of the people at large; or from passing laws unwise in their principle, or incorrect in their form; the utility of annexing the wisdom and weight of the judiciary to the executive seemed incontestable.

Gerry: Thought the executive whilst standing alone would be more impartial than when he could be covered by the sanction and seduced by the sophistry of the judges.

King: If the unity of the executive was preferred for the sake of responsibility, the policy of it is as applicable to the revisionary as to the executive power.

C. Pinckney: Had been at first in favor of joining the heads of the principal departments, the Secretary at War, of Foreign Affairs, etc., in the Council of Revision. He had, however, relinquished the idea, from a consideration that these could be called on by the executive magistrate whenever he pleased to consult them. He was opposed to the introduction of the judges into the business.

Mason: Was for giving all possible weight to the revisionary institution. The executive power ought to be well secured against legislative usurpations on it. The purse and the sword ought never to get into the same hands whether legislative or executive.

Dickinson: Secrecy, vigor, and despatch are not the principal properties required in the executive. Important as these are, that of responsibility is more so, which can only be preserved by leaving it singly to discharge its functions. He thought, too, a junction of the judiciary to it involved an improper mixture of powers.

Wilson: Remarked that the responsibility required belonged to

his executive duties. The revisionary duty was an extraneous one, calculated for collateral purposes.

Williamson: Was for substituting a clause requiring two-thirds for every effective act of the legislature, in place of the revisionary provision.

On the question for joining the judges to the executive in the revisionary business: Yeas 3 (Connecticut, New York, Virginia); nays 8 (Massachusetts, New Jersey, Pennsylvania, Delaware, Maryland, North Carolina, South Carolina, Georgia).

#### AGREEMENTS REFERRED TO COMMITTEE OF DETAIL

*July 26*

On the question on the whole resolution, as amended, in the words following: "that a national executive be instituted, to consist of a single person, to be chosen by the national legislature, for the term of seven years, to be ineligible a second time, with power to carry into execution the national laws, to appoint to offices in cases not otherwise provided for, to be removable on impeachment and conviction of malpractice or neglect of duty, to receive a fixed compensation for the devotion of his time to the public service, to be paid out of the national treasury,"—it passed in the affirmative: Yeas 6 (New Hampshire, Connecticut, New Jersey, North Carolina, South Carolina, Georgia); nays 3 (Pennsylvania, Delaware, Maryland); absent 1 (Massachusetts); divided 1 (Virginia).

This became the twelfth resolution on fundamentals referred to Committee of Detail.

In addition, the following was also referred to the same committee: Resolved, that the national executive shall have a right to negative any legislative act; which shall not be afterwards passed, unless by two-third parts of each branch of the national legislature. Thirteenth resolution on fundamentals.

## CHAPTER 16

### THE FEDERAL EXECUTIVE: ELABORATION OF FUNDAMENTALS

#### DELIBERATION ON FUNDAMENTALS

*Aug. 6*  
Details in Convention. Every bill, which shall have passed the House of Representatives and the Senate, shall, before it becomes a law, be presented to the President of the United States for his revision. If, upon such revision, he approve of it, he shall signify his approbation by signing it. But if, upon such revision, it shall appear to him improper for being passed into a law, he shall return it, together with his objections against it, to that house in which it shall have originated; who shall enter the objections at large on their journal, and proceed to reconsider the bill. But if, after such reconsideration, two-thirds of that house shall, notwithstanding the objections of the President, agree to pass it, it shall, together with his objections, be sent to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of the other house also, it shall become a law. But in all such cases, the votes of both houses shall be determined by yeas and nays; and the names of the persons voting for or against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the President within seven days after it shall have been presented to him, it shall be a law, unless the legislature, by their adjournment, prevent its return; in which case it shall not be a law. Article VI, Section 13, Committee of Detail.

The executive power of the United States shall be vested in

a single person. His style shall be, "The President of the United States of America," and his title shall be, "His Excellency." He shall be elected by ballot by the legislature. He shall hold his office during the term of seven years; but shall not be elected a second time. Article X, Section 1, Committee of Detail.

He shall, from time to time, give information to the legislature of the state of the Union. He may recommend to their consideration such measures as he shall judge necessary and expedient. He may convene them on extraordinary occasions. In case of disagreement between the two houses with regard to the time of adjournment, he may adjourn them to such time as he thinks proper. He shall take care that the laws of the United States be duly and faithfully executed. He shall commission all the officers of the United States; and shall appoint officers in all cases not otherwise provided for by this Constitution. He shall receive ambassadors, and may correspond with the supreme executives of the several states. He shall have power to grant reprieves and pardons, but his pardon shall not be pleadable in bar of an impeachment. He shall be Commander-in-Chief of the army and navy of the United States, and of the militia of the several states. He shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during his continuance in office. Before he shall enter on the duties of his department, he shall take the following oath or affirmation, "I ——— solemnly swear (or affirm) that I will faithfully execute the office of President of the United States of America." He shall be removed from his office on impeachment by the House of Representatives, and conviction in the Supreme Court, of treason, bribery, or corruption. In case of his removal, as aforesaid, death, resignation, or disability to discharge the powers and duties of his office, the president of the Senate shall exercise those powers and duties, until another President of the United States be chosen, or until the disability of the President be removed. Article X, Section 2, Committee of Detail.

*Aug. 15*

Madison: Moved that all acts before they become laws should be submitted both to the executive and supreme judiciary departments, that if either of these should object two-thirds of each house, if both should object three-fourths of each house, should be necessary to overrule the objections and give to the acts the force of law. The motion (for amendment of Article VI, Section 13) is as follows: "Every bill which shall have passed the two houses shall, before it become a law, be severally presented to the President of the United States, and to the judges of the Supreme Court, for the revision of each. If, upon such revision, they shall approve of it, they shall respectively signify their approbation by signing it; but if, upon such revision, it shall appear improper to either, or both, to be passed into a law, it shall be returned, with the objections against it, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider the bill: but if, after such reconsideration, two-thirds of that house, when either the President or a majority of the judges shall object, or three-fourths, where both shall object, shall agree to pass it, it shall, together with the objections, be sent to the other house; by which it shall likewise be reconsidered, and, if approved by two-thirds, or three-fourths of the other house, as the case may be, it shall become a law."

Wilson: Seconds the motion.

C. Pinckney: Opposed the interference of the judges in the legislative business: it will involve them in parties, and give a previous tincture to their opinions.

Mercer: Heartily approved the motion. It is an axiom that the judiciary ought to be separate from the legislative; but equally so that it ought to be independent of that department. The true policy of the axiom is that legislative usurpation and oppression may be obviated. He disapproved of the doctrine that the judges, as expositors of the Constitution, should have authority to declare a law void. He thought laws ought to be well and cautiously made, and then to be uncontrollable.



Gerry: This motion comes to the same thing with what has been already negatived.

On the question on the motion of Madison: Yeas 3 (Delaware, Maryland, Virginia); nays 8 (New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, North Carolina, South Carolina, Georgia).

G. Morris: Regretted that something like the proposed check could not be agreed to. He dwelt on the importance of public credit, and the difficulty of supporting it without some strong barrier against the instability of legislative assemblies. He suggested the idea of requiring three-fourths of each house to *repeal* laws where the President should not concur. He had no great reliance on the revisionary power, as the executive was now to be constituted (elected by Congress). The legislature will contrive to soften down the President. He recited the history of paper emissions, and the perseverance of the legislative assemblies in repeating them, with all the distressing effects of such measures before their eyes. Were the national legislature formed, and a war was now to break out, this ruinous expedient would again be resorted to, if not guarded against. The requiring three-fourths to repeal would, though not a complete remedy, prevent the hasty passage of laws, and the frequency of those repeals which destroy faith in the public, and which are among our greatest calamities.

Dickinson: Was strongly impressed with the remark of Mr. Mercer as to the power of the judges to set aside the law. He thought no such power ought to exist. He was, at the same time, at a loss what expedient to substitute. The Justiciary of Aragon, he observed, became by degrees the law-giver.

G. Morris: Suggested the expedient of an absolute negative in the executive. He could not agree that the judiciary, which was part of the executive, should be bound to say that a direct violation of the Constitution was law. A control over the legislature might have its inconveniences. But view the danger on the other side. The most virtuous citizens will often, as members of a legislative body, concur in measures which afterwards, in their private capacity, they will be ashamed of. En-

croachments of the popular branch of the government ought to be guarded against. The Ephori at Sparta became in the end absolute. The report of the council of censors in Pennsylvania points out the many invasions of the legislative department on the executive, numerous as the latter is, within the short term of seven years; and in a state where a strong party is opposed to the Constitution, and watching every occasion for turning the public resentments against it. If the executive be overturned by the popular branch, as happened in England, the tyranny of one man will ensue. In Rome, where the aristocracy overturned the throne, the consequence was different. He enlarged on the tendency of the legislative authority to usurp on the executive, and wished the section to be postponed in order to consider of some more effectual check than requiring two thirds only to overrule the negative of the executive.

Sherman: Can one man be trusted better than all the others, if they all agree? This was neither wise nor safe. He disapproved of judges meddling in politics and parties. We have gone far enough in forming the negative, as it now stands.

Carroll: When the negative to be overruled by two-thirds only was agreed to, the *quorum* was not fixed. He remarked that as a majority was now to be the quorum, seventeen in the larger, and eight in the smaller, house might carry points. The advantage that might be taken of this seemed to call for greater impediments to improper laws. He thought the controlling power, however, of the executive, could not be well decided till it was seen how the formation of that department would be finally regulated. He wished the consideration of the matter to be postponed.

Gorham: Saw no end to these difficulties and postponements. Some could not agree to the form of government before the powers were defined. Others could not agree to the powers till it was seen how the government was to be formed. He thought a majority as large a quorum as was necessary. It was the quorum almost everywhere fixed in the United States.

Wilson: After viewing the subject with all the coolness and at-

tention possible, was most apprehensive of a dissolution of the government from the legislature swallowing up all the other powers. He remarked that the prejudices against the executive resulted from a misapplication of the adage that the parliament was the palladium of liberty. Where the executive was really formidable, *king* and *tyrant* were naturally associated in the minds of people, not *legislature* and *tyranny*. But where the executive was not formidable, the two last were most properly associated. After the destruction of the King in Great Britain, a more pure and unmixed tyranny sprang up in the Parliament than had been exercised by the monarch. He insisted that we had not guarded against the danger on this side by a sufficient self-defensive power, either to the executive or judiciary department.

Rutledge: Was strenuous against postponing; and complained much of the tediousness of the proceedings.

Ellsworth: Held the same language. We grow more and more skeptical as we proceed. If we do not decide soon, we shall be unable to come to any decision.

The question for postponement passed in the negative, Delaware and Maryland only being in the affirmative.

Williamson: Moved to change "two-thirds of each house" into "three-fourths" as requisite to overrule the dissent of the President. He saw no danger in this and preferred giving the power to the President alone to admitting the judges into the business of legislation.

Wilson: Seconds the motion; referring to and repeating the ideas of Mr. Carroll.

On this motion for "three-fourths" instead of "two-thirds," it passed in the affirmative: Yeas 6 (Connecticut, Delaware, Maryland, Virginia, North Carolina, South Carolina); nays 4 (New Hampshire, Massachusetts, New Jersey, Georgia); divided 1 (Pennsylvania).

Madison: Observing that if the negative of the President was confined to *bills*, it would be evaded by acts under the form and name of resolutions, votes, etc., proposed that "or resolve" should be added after "bill" in the beginning of section 13,

with an exception as to votes of adjournment, etc. After a short and rather confused conversation on the subject, the question was put and rejected, the votes being as follows: Yeas 3 (Massachusetts, Delaware, North Carolina); nays 8 (New Hampshire, Connecticut, New Jersey, Pennsylvania, Maryland, Virginia, South Carolina, Georgia).

"Ten days (Sundays excepted)," instead of "seven," were allowed to the President for returning bills with his objections, New Hampshire and Massachusetts only voting against it.

The thirteenth section of Article VI, as amended, was then agreed to.

Randolph: Having thrown into a new form the motion putting votes, resolutions, etc., on a footing with bills, renewed it as follows: "Every order, resolution, or vote, to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment, and in the cases hereinafter mentioned) shall be presented to the President for his revision; and before the same shall have force, shall be approved by him, or, being disapproved by him, shall be re-passed by the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill."

*Aug. 16*

Sherman: Thought it unnecessary, except as to votes taking money out of the treasury, which might be provided for in another place.

On the question as moved by Randolph, it was agreed to: Yeas 9 (New Hampshire, Connecticut, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia); nays 1 (New Jersey); absent 1 (Massachusetts).

The amendment was made a fourteenth section of Article VI.

Ellsworth: Observed that a council had not yet been provided for the President. He conceived there ought to be one. His proposition was that it should be composed of the president of the Senate, the Chief Justice, and the ministers as they might be established for the Departments of Foreign and Domestic Affairs, War, Finance, and Marine; who should advise but not conclude the President.

*Aug. 18*

C. Pinckney: Wished the proposition to lie over, as notice had been given for a like purpose by Mr. Gouverneur Morris, who was not then on the floor. His own idea was that the President should be authorized to call for advice, or not, as he might choose. Give him an able council and it will thwart him; a weak one, and he will shelter himself under their sanction.

Gerry: Was against letting the heads of the departments, particularly of finance, have anything to do in business connected with legislation. He mentioned the Chief Justice also, as particularly exceptionable. These men will also be so taken up with other matters as to neglect their own proper duties.

Dickinson: Urged that the great appointments should be made by the legislature, in which case they might properly be consulted by the executive, but not if made by the executive himself.

Aug. 22 Rutledge submitted the following report for the Committee of Detail: At the end of the first section, tenth article, add, "he shall be of the age of thirty-five years, and a citizen of the United States, and shall have been an inhabitant thereof for twenty-one years."

After the second section, of the tenth article, insert the following as a third section: "The President of the United States shall have a Privy Council, which shall consist of the president of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, and the principal officer in the respective Departments of Foreign Affairs, Domestic Affairs, War, Marine, and Finance, as such departments of office shall from time to time be established; whose duty it shall be to advise him in matters respecting the execution of his office, which he shall think proper to lay before them: but their advice shall not conclude him, nor affect his responsibility for the measures which he shall adopt."

Aug. 24 On the question for vesting the power in a *single person*, it was agreed to, *nem. con.* So also on the *style* and *title*.

Rutledge: Moved to insert "joint" before the word "ballot" as the most convenient mode of electing.

Sherman: Objected to it, as depriving the *states*, represented in the *Senate*, of the negative intended them in that house.

Gorham: Said it was wrong to be considering, at every turn, who the Senate would represent. The public good was the true object to be kept in view. Great delay and confusion would ensue if the two houses should vote separately, each having a negative on the choice of the other.

Dayton: It might be well for those not to consider how the Senate was constituted, whose interest it was to keep it out of sight. If the amendment should be agreed to, a joint ballot would in fact give the appointment to one house. He could never agree to the clause with such an amendment. There could be no doubt of the two houses separately concurring in the same person for President. The importance and necessity of the case would ensure a concurrence.

Carroll: Moved to strike out "by the legislature" and insert "by the people."

Wilson: Seconded him.

On the question: Yeas 2 (Pennsylvania, Delaware), nays 9 (New Hampshire, Massachusetts, Connecticut, New Jersey, Maryland, Virginia, North Carolina, South Carolina, Georgia).

Brearley: Was opposed to inserting the word "joint." The argument that the small states should not put their hands into the pockets of the large ones did not apply in this case.

Wilson: Urged the reasonableness of giving the larger states a larger share of the appointment, and the danger of delay from a disagreement of the two houses. He remarked also that the Senate had peculiar powers balancing the advantage given by a joint ballot in this case to the other branch of the legislature.

Langdon: This general officer ought to be elected by the joint and general voice. In New Hampshire the mode of separate votes by the two houses was productive of great difficulties. The negative of the Senate would hurt the feelings of the man elected by the votes of the other branch. He was for inserting "joint," though unfavorable to New Hampshire as a small state.

Wilson: Remarked that as the president of the Senate was to be

the President of the United States, that body, in cases of vacancy, might have an interest in throwing dilatory obstacles in the way, if its separate concurrence should be required.

Madison: If the amendment be agreed to, the rule of voting will give to the largest state, compared with the smallest, an influence as four to one only, although the population is as ten to one. This surely cannot be unreasonable, as the President is to act for the *people*, not for the *states*. The president of the *Senate* also is to be occasionally President of the United States, and by his negative alone can make three-fourths of the other branch necessary to the passage of a law. This is another advantage enjoyed by the Senate.

On the question for inserting "joint," it passed in the affirmative: Yeas 7 (New Hampshire, Massachusetts, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina); nays 4 (Connecticut, New Jersey, Maryland, Georgia).

Dayton: Then moved to insert, after the word "legislature," the words, "each state having one vote."

Brearley: Seconded him.

On the question, it passed in the negative: Yeas 5 (Connecticut, New Jersey, Delaware, Maryland, Georgia); nays 6 (New Hampshire, Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina).

C. Pinckney: Moved to insert after the word "legislature" the words "to which election a majority of the votes of the members present shall be required."

And on this question, it passed in the affirmative: Yeas 10 (New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia); nays 1 (New Jersey).

Read: Moved that "in case the number for the two highest in votes should be equal, then the president of the Senate shall have an additional casting vote," which was disagreed to by a general negative.

G. Morris: Opposed the election of the President by the legislature. He dwelt on the danger of rendering the executive un-

interested in maintaining the rights of his station, as leading to legislative tyranny. If the legislature have the executive dependent on them, they can perpetuate and support their usurpations by the influence of the taxgatherers and other officers, by fleets, armies, etc. Cabal and corruption are attached to that mode of election. So is ineligibility a second time. Hence the executive is interested in courting popularity in the legislature, by sacrificing his executive rights; and then he can go into that body after the expiration of his executive office, and enjoy there the fruits of his policy. To these considerations he added that rivals would be continually intriguing to oust the President from his place. To guard against all these evils, he moved that the President "shall be chosen by electors to be chosen by the people of the several states."

Carroll: Seconded him.

On the question, it passed in the negative: Yeas 5 (Connecticut, New Jersey, Pennsylvania, Delaware, Virginia); nays 6 (New Hampshire, Massachusetts, Maryland, North Carolina, South Carolina, Georgia).

On the question taken on the first part of G. Morris's motion, to wit: "shall be chosen by electors," as an abstract question, it failed, the states being equally divided: Yeas 4 (New Jersey, Pennsylvania, Delaware, Virginia); nays 4 (New Hampshire, North Carolina, South Carolina, Georgia); divided 2 (Connecticut, Maryland); absent 1 (Massachusetts).

The word "information" was transferred and inserted after "legislature" in Article X, Section 2.

On motion of G. Morris, "he may" was struck out and "and" inserted before "recommend" in the second clause of Article X, Section 2, in order to make it the *duty* of the President to recommend, and thence prevent umbrage or cavil at his doing it.

Sherman: Objected to the sentence, "and shall appoint officers in all cases not otherwise provided for in this Constitution." He admitted it to be proper that many officers in the executive department should be so appointed; but contended that



many ought not—as general officers in the army, in time of peace, etc. Herein lay the corruption in Great Britain. If the executive can model the army, he may set up an absolute government; taking advantage of the close of a war, and an army commanded by his creatures. James II was not obeyed by his officers because they had been appointed by his predecessors, not by himself. He moved to insert “or by law” after the word “Constitution.”

On motion of Madison, “officers” was struck out, and “to offices” inserted, in order to obviate doubts that he might appoint officers without a previous creation of the offices by the legislature.

On the question for inserting “or by law” as moved by Sherman: Yeas 1 (Connecticut); nays 9 (New Hampshire, Massachusetts, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, South Carolina, Georgia); absent 1 (North Carolina).

Dickinson: Moved to strike out the words “and shall appoint to offices in all cases not otherwise provided for by this Constitution” and insert “and shall appoint to all offices established by this Constitution, except in cases herein otherwise provided for; and to all offices which may hereafter be created by law.”

Randolph: Observed that the power of appointments was a formidable one both in the executive and legislative hands; and suggested whether the legislature should not be left at liberty to refer appointments, in some cases, to some state authority.

Dickinson’s motion passed in the affirmative: Yeas 6 (Connecticut, New Jersey, Pennsylvania, Maryland, Virginia, Georgia); nays 4 (New Hampshire, Massachusetts, Delaware, South Carolina); absent 1 (North Carolina).

Dickinson: Then moved to annex to his last amendment “except where by law the appointment shall be vested in the legislatures or executives of the several states.”

Randolph: Seconded the motion.

Wilson: If this be agreed to, it will soon be a standing instruction to the state legislatures to pass no law creating offices, unless the appointment be referred to them.

Sherman: Objected to "legislatures" in the motion, which was struck out by consent of the movers.

G. Morris: This would be putting it in the power of the states to say, "you shall be viceroys, but we will be viceroys over you."

The motion was negated without a count of the states.

On the question now taken on Dickinson's motion of yesterday, allowing appointments to offices to be referred by the general legislature to "the executives of the several states" as a further amendment to Article X, Section 2, the votes were: Yeas 3 (Connecticut, Virginia, Georgia); nays 6 (New Hampshire, Massachusetts, Pennsylvania, Delaware, North Carolina, South Carolina); divided 1 (Maryland).

Aug. 25

In amendment of the same section, the words "other public ministers" were inserted after "ambassadors."

G. Morris: Moved to strike out the section, "and may correspond with the supreme executives of the several states" as unnecessary, and implying that he could not correspond with others.

Broom: Seconded him.

On the question: Yeas 9 (New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia); nays 1 (Maryland).

The clause "shall receive ambassadors and other public ministers" was agreed to, *nem. con.*

Sherman: Moved to amend the "power to grant reprieves and pardons" so as to read "to grant reprieves until the ensuing session of the Senate, and pardons with consent of the Senate."

On the question: Yeas 1 (Connecticut); nays 8 (New Hampshire, Massachusetts, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia).

The words "except in cases of impeachment" were inserted, *nem. con.*, after "pardons."

On the question to agree to "but his pardon shall not be pleadable in bar," it passed in the negative: Yeas 4 (New Hampshire, Maryland, North Carolina, South Carolina); nays 6 (Massachusetts, Connecticut, Pennsylvania, Delaware, Virginia, Georgia).

- Aug. 27 L. Martin: Moved to insert the words "after conviction" after the words "reprieves and pardons."
- Wilson: Objected that pardon before conviction might be necessary, in order to obtain the testimony of accomplices. He stated the case of forgeries, in which this might particularly happen.
- L. Martin: Withdrew his motion.
- Sherman: Moved to amend the clause giving the executive the command of the militia, so as to read: "and of the militia of the several states, *when called into the actual service of the United States.*"
- On the question: Yeas 6 (New Hampshire, Connecticut, Pennsylvania, Maryland, Virginia, Georgia); nays 2 (Delaware, South Carolina); absent 3 (Massachusetts, New Jersey, North Carolina).
- The clause for removing the President, on impeachment by the House of Representatives, and conviction in the Supreme Court, of treason, bribery, or corruption, was postponed, *nem. con.*, at the instance of G. Morris, who thought the tribunal an improper one, particularly, if the first judge was to be of the Privy Council.
- G. Morris: Objected also to the president of the Senate being provisional successor to the President, and suggested a designation of the Chief Justice.
- Madison: Adds, as a ground of objection, that the Senate might retard the appointment of a President, in order to carry points whilst the revisionary power was in the president of their own body; but suggested that the executive powers during a vacancy be administered by the persons composing the council to the President.
- Williamson: Suggested that the legislature ought to have power to provide for occasional successors; and moved that the last clause of Article X, Section 2, relating to a provisional successor to the President, be postponed.
- Dickinson: Seconded the postponement, remarking that it was too vague. What is the extent of the term "disability," and who is to be the judge of it?

The postponement was agreed to, *nem. con.*

Mason and Madison: Moved to add to the oath to be taken by the supreme executive, "and will, to the best of my judgment and power, preserve, protect, and defend the Constitution of the United States."

Wilson: Thought the general provision for oaths of office, in a subsequent place, rendered the amendment unnecessary.

On the question: Yeas 7 (New Hampshire, Connecticut, Pennsylvania, Maryland, Virginia, South Carolina, Georgia); nays 1 (Delaware); absent 3 (Massachusetts, New Jersey, North Carolina).

#### RECONSIDERATION OF FUNDAMENTALS

Details in Convention. Brearley, for the Committee on Unfinished Business, submitted the following reports: Sept. 4

"After the word 'Excellency' in Section 1, Article X, to be inserted: 'He shall hold his office during the term of four years, and together with the Vice President, chosen for the same term, be elected in the following manner, viz.: Each state shall appoint, in such manner as its legislature may direct, a number of electors equal to the whole number of senators and members of the House of Representatives to which the state may be entitled in the legislature. The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves; and they shall make a list of all the persons voted for, and of the number of votes for each, which list they shall sign and certify, and transmit sealed to the seat of the general government, directed to the president of the Senate. The president of the Senate shall in that house open all the certificates, and the votes shall be then and there counted. The person having the greatest number of votes shall be the President, if such number be a majority of that of the electors; and if there be more than one who have such a majority, and have an equal number of votes, then the Senate shall immediately choose by ballot one of them for President; but if no

person have a majority, then from the five highest on the list, the Senate shall choose by ballot the President; and in every case after the choice of the President, the person having the greatest number of votes shall be Vice President; but if there should remain two or more who have equal votes, the Senate shall choose from them the Vice President. The legislature may determine the time of choosing and assembling the electors, and the manner of certifying and transmitting their votes.'

"Section 2. 'No person except a natural born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President; nor shall any person be elected to that office who shall be under the age of thirty-five years, and who has not been, in the whole, at least fourteen years a resident within the United States.'

"Section 3. 'The Vice President shall be ex officio president of the Senate; except when they sit to try the impeachment of the President; in which case the Chief Justice shall preside, and excepting also when he shall exercise the powers and duties of President; in which case, and in case of his absence, the Senate shall choose a president pro tempore. The Vice President, when acting as President of the Senate, shall not have a vote unless the House be equally divided.'

"Section 4. 'The President, by and with the advice and consent of the Senate, shall have power to make treaties; and he shall nominate, and, by and with the advice and consent of the Senate, shall appoint ambassadors, and other public ministers, judges of the Supreme Court, and all other officers of the United States whose appointments are not otherwise herein provided for. But no treaty shall be made without the consent of two-thirds of the members present.'

"After the words, 'into the service of the United States' in Section 2, Article X, add 'and may require the opinion in writing of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices.'

"The latter part of Section 2, Article X, to read as follows: 'He shall be removed from his office on impeachment by the House of Representatives, and conviction by the Senate, for treason or bribery; and in case of his removal as aforesaid, death, absence, resignation or inability to discharge the powers or duties of his office, the Vice President shall exercise those powers and duties, until another President be chosen, or until the inability of the President be removed.' "

Gorham: Disapproved of making the next highest after the President the Vice President, without referring the decision to the Senate in case the next highest should have less than a majority of votes. As the regulation stands, a very obscure man with very few votes may arrive at that appointment.

Sherman: Said the object of this clause of the report of the committee was to get rid of the ineligibility which was attached to the mode of election by the legislature, and to render the executive independent of the legislature. As the choice of the President was to be made out of the five highest, obscure characters were sufficiently guarded against in that case; and he had no objection to requiring the Vice President to be chosen in like manner, where the choice was not decided by a majority in the first instance.

Madison: Was apprehensive that by requiring both the President and Vice President to be chosen out of the highest candidates, the attention of the electors would be turned too much to making candidates, instead of giving their votes in order to a definitive choice. Should this turn be given to the business, the election would in fact be consigned to the Senate altogether. It would have the effect, at the same time, he observed, of giving the nomination of the candidates to the largest states.

G. Morris: Concurred in and enforced the remarks of Mr. Madison.

Randolph and C. Pinckney: Wished for a particular explanation, and discussion, of the reasons for changing the mode of electing the executive.

G. Morris: Said he would give the reasons of the committee, and his own. The first was the danger of intrigue and faction, if

the appointment should be made by the legislature. The next was the inconvenience of an ineligibility required by that mode in order to lessen its evils. The third was the difficulty of establishing a court of impeachments, other than the Senate, which would not be so proper for the trial, nor the other branch, for the impeachment of the President, if appointed by the legislature. In the fourth place, nobody had appeared to be satisfied with an appointment by the legislature. In the fifth place, many were anxious even for an immediate choice by the people. And finally, the sixth reason was the indispensable necessity of making the executive independent of the legislature. As the electors would vote at the same time, throughout the United States, and at so great a distance from each other, the great evil of cabal was avoided. It would be impossible, also, to corrupt them. A conclusive reason for making the Senate, instead of the Supreme Court, the judge of impeachments, was that the latter was to try the President, after the trial of the impeachment.

Mason: Confessed that the plan of the committee had removed some capital objections, particularly the danger of cabal and corruption. It was liable, however, to this strong objection, that nineteen times in twenty the President would be chosen by the Senate, an improper body for the purpose.

Butler: Thought the mode not free from objections; but much more so than an election by the legislature, where, as in elective monarchies, cabal, faction, and violence would be sure to prevail.

C. Pinckney: Stated as objections to the mode—first, that it threw the whole appointment in fact, into the hands of the Senate. Secondly, the electors will be strangers to the several candidates, and of course unable to decide on their comparative merits. Thirdly, it makes the executive re-eligible, which will endanger the public liberty. Fourthly, it makes the same body of men which will, in fact, elect the President, his judges in case of an impeachment.

Williamson: Had great doubts whether the advantage of re-eligibility would balance the objection to such a dependence

of the President on the Senate for his reappointment. He thought, at least, the Senate ought to be restrained to the *two* highest on the list.

G. Morris: Said the principal advantage aimed at was that of taking away the opportunity for cabal. The President may be made, if thought necessary, ineligible on this as well as on any other mode of election. Other inconveniences may be no less redressed on this plan than any other.

Baldwin: Thought the plan not so objectionable, when well considered, as at first view. The increasing intercourse among the people of the states would render important characters less and less unknown; and the Senate would, consequently, be less and less likely to have the eventual appointment thrown into their hands.

Wilson: This subject has greatly divided the House, and will also divide the people out of doors. It is in truth the most difficult of all on which we have had to decide. He had never made up an opinion on it entirely to his own satisfaction. He thought the plan, on the whole, a valuable improvement on the former. It gets rid of one great evil, that of cabal and corruption; and continental characters will multiply as we more and more coalesce, so as to enable the electors in every part of the Union to know and judge of them. It clears the way also for a discussion of the question of re-eligibility, on its own merits, which the former mode of election seemed to forbid. He thought it might be better, however, to refer the eventual appointment to the legislature than to the Senate, and to confine it to a smaller number than five of the candidates. The eventual election by the legislature would not open cabal anew, as it would be restrained to certain designated objects of choice, and as these must have had the previous sanction of a number of the states, and if the election be made as it ought, as soon as the votes of the electors are opened, and it is known that no one has a majority of the whole, there can be little danger of corruption. Another reason for preferring the legislature to the Senate in this business was that the House of Representatives will be so often changed as to be free from



the influence and faction to which the permanence of the Senate may subject that branch.

Randolph: Preferred the former mode of constituting the executive; but if the change was to be made, he wished to know why the eventual election was referred to the *Senate* and not to the *legislature*? He saw no necessity for this, and many objections to it. He was apprehensive, also, that the advantage of the eventual appointment would fall into the hands of the states near the seat of government.

G. Morris: Said the *Senate* was preferred because fewer could then say to the President, you owe your appointment to us. He thought the President would not depend so much on the Senate for his reappointment as on his general good conduct. The further consideration of the report was postponed that each member might take a copy of the remainder of it.

Sept. 5

C. Pinckney: Renewed his opposition to the mode; arguing, first, that the electors will not have sufficient knowledge of the fittest men and will be swayed by an attachment to the eminent men of their respective states. Hence, secondly, the dispersion of the votes would leave the appointment with the Senate, and as the President's reappointment will thus depend on the Senate, he will be the mere creature of that body. Thirdly, he will combine with the Senate against the House of Representatives. Fourthly, this change in the mode of election was meant to get rid of the ineligibility of the President a second time, whereby he will become fixed for life under the auspices of the Senate.

Gerry: Did not object to this plan of constituting the executive in itself, but should be governed in his final vote by the powers that may be given to the President.

Rutledge: Was much opposed to the plan reported by the committee. It would throw the whole power into the Senate. He was also against a re-eligibility. He moved to postpone the report under consideration and take up the original plan of appointment by the legislature, to wit: "He shall be elected by joint ballot by the legislature, to which election a majority of the votes of the members present shall be required. He shall

hold his office during the term of seven years; but shall not be elected a second time."

On this motion to postpone: Yeas 2 (North Carolina, South Carolina); nays 8 (Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, Georgia); divided 1 (New Hampshire).

Mason: Admitted that there were objections to an appointment by the legislature, as originally planned. He had not yet made up his mind, but would state his objections to the mode proposed by the committee. First, it puts the appointment, in fact, into the hands of the Senate, as it will rarely happen that a majority of the whole vote will fall on any one candidate; and as the existing President will always be one of the five highest, his re-appointment will of course depend on the Senate. Secondly, considering the powers of the President and those of the Senate, if a coalition should be established between these two branches, they will be able to subvert the Constitution. The great objection with him would be removed by depriving the Senate of the eventual election. He accordingly moved to strike out the words, "if such number be a majority of that of the electors."

Williamson: Seconded the motion. He could not agree to the clause without some such modification. He preferred making the highest, though not having a majority of the votes, President, to a reference of the matter to the Senate. Referring the appointment to the Senate lays a certain foundation for corruption and aristocracy.

G. Morris: Thought the point of less consequence than it was supposed on both sides. It is probable that a majority of the votes will fall on the same man; as each elector is to give two votes, more than one-fourth will give a majority. Besides, as one vote is to be given to a man out of the state, and as this vote will not be thrown away, half the votes will fall on characters eminent and generally known. Again, if the President shall have given satisfaction, the votes will turn on him of course; and a majority of them will reappoint him, without resort to the Senate. If he should be disliked, all disliking him

would take care to unite their votes so as to ensure his being supplanted.

Mason: Those who think there is no danger of there not being a majority for the same person in the first instance, ought to give up the point to those who think otherwise.

Sherman: Reminded the opponents of the new mode proposed that if the small states had the advantage in the Senate's deciding among the five highest candidates, the large states would have in fact the nomination of these candidates.

On Mason's motion: Yeas 2 (Maryland, North Carolina); the other nine states, nay.

Wilson: Moved to strike out "Senate" and insert the word "legislature."

Madison: Considered it a primary object to render an eventual resort to any part of the legislature improbable. He was apprehensive that the proposed alteration would turn the attention of the large states too much to the appointment of candidates instead of aiming at an effectual appointment of the officer; as the large states would predominate in the legislature, which would have the final choice out of the candidates. Whereas, if the Senate, in which the small states predominate, should have the final choice, the concerted effort of the large states would be to make the appointment in the first instance conclusive.

Randolph: We have, in some revolutions of this plan, made a bold stroke for monarchy. We are now doing the same for an aristocracy. He dwelt on the tendency of such an influence in the Senate over the election of the President, in addition to its other powers, to convert that body into a real and dangerous aristocracy.

Dickinson: Was in favor of giving the eventual election to the legislature instead of the Senate. It was too much influence to be superadded to that body.

On the question moved by Wilson: Yeas 3 (Pennsylvania, Virginia, South Carolina); nays 7 (Massachusetts, Connecticut, New Jersey, Delaware, Maryland, North Carolina, Georgia); divided 1 (New Hampshire).

Madison and Williamson: Moved to strike out the word "majority" and insert "one-third"; so that the eventual power might not be exercised if less than a majority, but not less than one-third, of the electors should vote for the same person.

Gerry: Objected that this would put it in the power of three or four states to put in whom they pleased.

Williamson: There are seven states which do not contain one-third of the people. If the Senate are to appoint, less than one-sixth of the people will have the power.

On the question: Yeas 2 (Virginia, North Carolina); the other nine states, nay.

Gerry: Suggested that the eventual election should be made by six senators and seven representatives, chosen by joint ballot of both houses.

King: Observed that the influence of the small states in the Senate was somewhat balanced by the influence of the large states in bringing forward the candidates,<sup>1</sup> and also by the concurrence of the small states in the committee in the clause vesting the exclusive origination of money bills in the House of Representatives.

Mason: Moved to strike out the word "five" and insert the word "three," as the highest candidates for the Senate to choose out of.

Gerry: Seconded the motion.

Sherman: Would sooner give up the plan. He would prefer seven or thirteen.

On the question moved by Mason and Gerry: Yeas 2 (Virginia, North Carolina); nays 9 (New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, South Carolina, Georgia).

Spaight and Rutledge: Moved to strike out "five" and insert

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<sup>1</sup> This explains the compromise alluded to by Mr. Gouverneur Morris. Col. Mason, Mr. Gerry, and other members from large states set great value on this privilege of originating money bills. Of this the members from the small states, with some from the large states who wished a high mounted government, endeavoured to avail themselves, by making that privilege the price of arrangements in the Constitution favorable to the small states, and to the elevation of the government.

"thirteen"; to which all the states disagreed except North Carolina and South Carolina.

Madison and Williamson: Moved to insert, after "electors," the words "who shall have balloted"; so that the non-voting electors, not being counted, might not increase the number necessary as a majority of the whole to decide the choice without the agency of the Senate.

On this question: Yeas 4 (Pennsylvania, Maryland, Virginia, North Carolina); nays 7 (New Hampshire, Massachusetts, Connecticut, New Jersey, Delaware, South Carolina, Georgia).

Dickinson: Moved, in order to remove ambiguity from the intention of the clause, as explained by the vote, to add, after the words, "if such number be a majority of the whole number of the electors," the word "appointed."

On this motion: Yeas 9 (New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, South Carolina, Georgia); nays 2 (Virginia, North Carolina).

Mason: As the mode of appointment is now regulated, he could not forbear expressing his opinion that it is utterly inadmissible. He would prefer the government of Prussia to one which will put all power into the hands of seven or eight men, and fix an aristocracy worse than absolute monarchy.

The words "and of their giving their votes" were inserted, on motion for that purpose, after the words "The legislature may determine the time of choosing and assembling the electors."

Sept. 6 King and Gerry: Moved to insert in the fourth clause of the report after the words "may be entitled in the legislature," the words following: "But no person shall be appointed an elector who is a member of the legislature of the United States, or who holds any office of profit or trust under the United States"; which passed, *nem. con.*

Gerry: Proposed, as the President was to be elected by the Senate out of the five highest candidates, that if he should not at the end of his term be re-elected by a majority of the electors, and no other candidate should have a majority, the eventual election should be made by the legislature. This, he said, would re-

lieve the President from his particular dependence on the Senate, for his continuance in office.

King: Liked the idea, as calculated to satisfy particular members, and promote unanimity; and as likely to operate but seldom.

Read: Opposed it; remarking that if individual members were to be indulged, alterations would be necessary to satisfy most of them.

Williamson: Espoused it, as a reasonable precaution against the undue influence of the Senate.

Sherman: Liked the arrangement as it stood, though he should not be averse to some amendments. He thought, he said, that if the legislature were to have the eventual appointment, instead of the Senate, it ought to vote in the case by the states—in favor of the small states, as the large states would have so great an advantage in nominating the candidates.

G. Morris: Thought favorably of Mr. Gerry's proposition. It would free the President from being tempted, in naming to offices, to conform to the will of the Senate, and thereby virtually give the appointments to office to the Senate.

Wilson: Said that he had weighed carefully the report of the committee for remodeling the constitution of the executive; and on combining it with other parts of the plan, he was obliged to consider the whole as having a dangerous tendency to aristocracy; as throwing a dangerous power into the hands of the Senate. They will have, in fact, the appointment of the President, and through his dependence on them, the virtual appointment to offices; among others, the officers of the judiciary department. They are to make treaties; and they are to try all impeachments. In allowing them thus to make the executive and judiciary appointments, to be the court of impeachments, and to make treaties which are to be laws of the land, the legislative, executive and judiciary powers are all blended in one branch of the government. The power of making treaties involves the case of subsidies, and here, as an additional evil, foreign influence is to be dreaded. According to the plan as it now stands, the President will not be the man of the

people, as he ought to be; but the minion of the Senate. He cannot even appoint a tidewaiter without the Senate. He had always thought the Senate too numerous a body for making appointments to office. The Senate will, moreover, in all probability, be in constant session. They will have high salaries. And with all those powers, and the President in their interest, they will depress the other branch of legislature, and aggrandize themselves in proportion. Add to all this, that the Senate, sitting in conclave, can by holding up to their respective states various and improbable candidates, contrive so to scatter their votes as to bring the appointment of the President ultimately before themselves. Upon the whole, he thought the new mode of appointing the President, with some amendments, a valuable improvement; but he could never agree to purchase it at the price of the ensuing parts of the report, nor befriend a system of which they made a part.

G. Morris: Expressed his wonder at the observations of Mr. Wilson, so far as they preferred the plan in the printed report to the new modification of it before the House; and entered into a comparative view of the two, with an eye to the nature of Mr. Wilson's objections to the last. By the first, the Senate, he observed, had a voice in appointing the President out of all of the citizens of the United States; by this they were limited to five candidates, previously nominated to them, with a probability of being barred altogether by the successful ballot of electors. Here surely was no increase of power. They are now to appoint judges, nominated to them by the President. Before, they had the appointment without any agency whatever of the President. Here again was surely no additional power. If they are to make treaties, as the plan now stands, the power was the same in the printed plan. If they are to try impeachments, the judges must have been triable by them before. Wherein, then, lay the dangerous tendency of the innovations to establish an aristocracy in the Senate? As to the appointment of officers, the weight of sentiment in the House was opposed to the exercise of it by the President alone; though it was not the case with himself. If the Senate would act as was

suspected, in misleading the states into a fallacious disposition of their votes for a President, they would, if the appointment were withdrawn wholly from them, make such representations in their several states where they have influence, as would favor the object of their partiality.

Williamson: Replying to Mr. Morris, observed that the aristocratic complexion proceeds from the change in the mode of appointing the President, which makes him dependent on the Senate.

Clymer: Said that the aristocratic part, to which he could never accede, was that, in the printed plan, which gave the Senate the power of appointing to offices.

Hamilton: Said that he had been restrained from entering into the discussions by his dislike of the scheme of government in general; but as he meant to support the plan to be recommended, as better than nothing, he wished in this place to offer a few remarks. He liked the new modification, on the whole, better than that in the printed report. In this, the President was a monster, elected for seven years, and ineligible afterwards; having great powers in appointments to office; and continually tempted, by this constitutional disqualification, to abuse them in order to subvert the government. Although he should be made re-eligible, still, if appointed by the legislature, he would be tempted to make use of corrupt influence to be continued in office. It seemed peculiarly desirable, therefore, that some other mode of election should be devised. Considering the different views of different states, and the different districts, northern, middle, and southern, he concurred with those who thought that the votes would not be concentrated, and that the appointment would consequently in the present mode devolve on the Senate. The nomination to offices will give great weight to the President. Here, then, is a mutual connection and influence that will perpetuate the President and aggrandize both him and the Senate. What is to be the remedy? He saw none better than to let the highest number of ballots, whether a majority or not, appoint the President. What was the objection to this? Merely that too small a num-



ber might appoint. But as the plan stands, the Senate may take the candidate having the smallest number of votes, and make him President.

Spaight and Williamson: Moved to insert "seven" instead of "four" years, for the term of the President.<sup>2</sup>

On this motion: Yeas 3 (New Hampshire, Virginia, North Carolina); nays 8 (Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, South Carolina, Georgia).

Spaight and Williamson: Then moved to insert "six" instead of "four."

On which motion: Yeas 2 (North Carolina, South Carolina); nays 9 (New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, Georgia).

On the term "four," all the states were aye, except North Carolina, no.

On the question on the fourth clause in the report, for appointing the President by electors, down to the words "entitled in the legislature," inclusive: Yeas 9 (New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, Georgia); nays 2 (North Carolina, South Carolina).

It was moved that the electors meet at the seat of the general government; which passed in the negative, North Carolina only being aye.

It was then moved to insert the words, "under the seal of the state" after the word "transmit" in the fourth clause of the report; which was disagreed to; as was another motion to insert the words, "and who shall have given their votes" after the word "appointed" in the fourth clause of the report, as added yesterday on motion of Dickinson.

On several motions, the words "in presence of the Senate and House of Representatives" were inserted after the word "counted"; and the word "immediately" before the word "choose"; and the words, "of the electors" after the word "votes."

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<sup>2</sup> An ineligibility would have followed (though it would seem from the vote, not in the opinion of all) this prolongation of the term.

Spaight: Said if the election by electors is to be crammed down, he would prefer their meeting altogether, and deciding finally without any reference to the Senate; and moved "that the electors meet at the seat of the general government."

Williamson: Seconded the motion; on which all the states were in the negative, except North Carolina.

On motion, the words "But the election shall be on the same day throughout the United States" were added after the words "transmitting their votes": Yeas 8 (New Hampshire, Connecticut, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia); nays 3 (Massachusetts, New Jersey, Delaware).

On the question on the sentence in the fourth clause, "if such number be a majority of that of the electors appointed": Yeas 8 (New Hampshire, Massachusetts, Connecticut, New Jersey, Delaware, Maryland, South Carolina, Georgia); nays 3 (Pennsylvania, Virginia, North Carolina).

The report relating to the appointment of the executive stands, as amended, as follows:

"He shall hold his office during the term of four years; and, together with the Vice President, chosen for the same term, be elected in the following manner:

"Each state shall appoint, in such manner as its legislature may direct, a number of electors equal to the whole number of senators and members of the House of Representatives, to which the state may be entitled in the legislature.

"But no person shall be appointed an elector who is a member of the legislature of the United States, or who holds any office of profit or trust under the United States.

"The electors shall meet in their respective states, and vote by ballot, for two persons, of whom one at least shall not be an inhabitant of the same state with themselves; and they shall make a list of all the persons voted for, and of the number of votes of each; which list they shall sign and certify, and transmit sealed to the seat of the general government, directed to the president of the Senate.

"The president of the Senate shall, in the presence of the

Senate and House of Representatives, open all the certificates, and the votes shall then be counted.

"The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; the representation from each state having one vote. But if no person have a majority, then from the five highest on the list the House of Representatives shall, in like manner, choose by ballot the President. In the choice of a President by the House of Representatives, a quorum shall consist of a member or members from two-thirds of the states (and <sup>3</sup> the concurrence of a majority of all the states shall be necessary to such choice). And in every case after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice President. But if there should remain two or more who have equal votes, the Senate shall choose from them the Vice President.

"The legislature may determine the time of choosing the electors and of their giving their votes; and the manner of certifying and transmitting their votes; but the election shall be on the same day throughout the United States."

*Sept. 7* Randolph: Moved to insert, in the first section of the report made yesterday, the following: "The legislature may declare by law what officer of the United States shall act as President, in case of the death, resignation or disability of the President and Vice President; and such officer shall act accordingly, until the time of electing a President shall arrive."

Madison: Observed that this, as worded, would prevent a supply of the vacancy by an intermediate election of the President, and moved to substitute, "until such disability be removed, or a President shall be elected." <sup>4</sup>

G. Morris: Seconded the motion, which was agreed to.

It seemed to be an objection to the provision with some that,

<sup>3</sup> This clause was not inserted on this day, but on the seventh of September.

<sup>4</sup> In the printed journal this amendment is put into the original motion.

according to the process established for choosing the executive, there would be difficulty in effecting it at other than the fixed periods; with others, that the legislature was restrained in the temporary appointment to "officers" of the United States. They wished it to be at liberty to appoint others than such.

On the motion of Randolph, as amended, it passed in the affirmative: Yeas 6 (New Jersey, Pennsylvania, Maryland, Virginia, South Carolina, Georgia); nays 4 (Massachusetts, Connecticut, Delaware, North Carolina); divided 1 (New Hampshire).

Gerry: Moved "that in the election of President by the House of Representatives, no state shall vote by less than three members; and where that number may not be allowed to the state, it shall be made up by its senators; and a concurrence of a majority of all the states shall be necessary to make such choice." Without some such provision, five individuals might possibly be competent to an election, these being a majority of two-thirds of the existing number of states; and two-thirds being a quorum for this business.

Madison: Seconded the motion.

Read: Observed that the states having but one member only in the House of Representatives would be in danger of having no vote at all in the election: the sickness or absence either of the representatives or one of the senators would have that effect.

Madison: Replied that if one member of the House of Representatives should be left capable of voting for the state, the states having one representative only would still be subject to that danger. He thought it an evil that so small a number, at any rate, should be authorized to elect. Corruption would be greatly facilitated by it. The mode itself was liable to this further weighty objection that the representatives of a *minority* of the people might reverse the choice of a *majority* of the *states* and of the *people*. He wished some cure for this inconvenience might yet be provided.

Gerry: Withdrew the first part of his motion; and on the question on the second part, viz., "and a concurrence of a majority of all the states shall be necessary to make such choice," to follow

the words, "a member or members from two-thirds of the states," it was agreed to, *nem. con.*

The second section, requiring that the President should be a natural born citizen, etc., and have been a resident for fourteen years, and be thirty-five years of age, was agreed to, *nem. con.*

The third section, "The Vice President shall be ex officio president of the Senate," being then considered:

Gerry: Opposed this regulation. We might as well put the President himself at the head of the legislature. The close intimacy that must subsist between the President and Vice President makes it absolutely improper. He was against having any Vice President.

G. Morris: The Vice President then will be the first heir apparent that ever loved his father. If there should be no Vice President, the president of the Senate would be temporary successor, which would amount to the same thing.

Sherman: Saw no danger in the case. If the Vice President were not to be president of the Senate, he would be without employment; and some member, by being made president, must be deprived of his vote, unless when an equal division of votes might happen in the Senate, which would be but seldom.

Randolph: Concurred in the opposition to the clause.

Williamson: Observed that such an officer as Vice President was not wanted. He was introduced merely for the sake of a valuable mode of election, which required two to be chosen at the same time.

Mason: Thought the office of Vice President an encroachment on the rights of the Senate; and that it mixed too much the legislative and the executive, which, as well as the judiciary department, ought to be kept as separate as possible. He took occasion to express his dislike of any reference whatever, of the power to make appointments, to either branch of the legislature. On the other hand, he was averse to vest so dangerous a power in the President alone. As a method of avoiding both, he suggested that a Privy Council, of six members, to the President, should be established; to be chosen for six years

by the Senate, two out of the eastern, two out of the middle, and two out of the southern quarters of the Union; and to go out in rotation, two every second year; the concurrence of the Senate to be required only in the appointment of ambassadors, and in making treaties, which are more of a legislative nature. This would prevent the constant sitting of the Senate, which he thought dangerous; as well as keep the departments separate and distinct. It would also save the expense of constant sessions of the Senate. He had, he said, always considered the Senate as too unwieldy and expensive for appointing officers, especially the smallest, such as tidewaiters, etc. He had not reduced his idea to writing, but it could be easily done, if it should be found acceptable.

On the question: Shall the Vice President be ex officio president of the Senate?—Yeas 8 (New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Virginia, South Carolina, Georgia); nays 2 (New Jersey, Maryland); absent 1 (North Carolina).

The other parts of the same section were then agreed to.

The clause, “and may require the opinion in writing of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices,” being before the House:

Mason: <sup>5</sup> Said that in rejecting a council to the President, we were about to try an experiment on which the most despotic government had never ventured. The Grand Signor himself had his Divan. He moved to postpone the consideration of the clause in order to take up the following: “That it be an instruction to the committee of the states to prepare a clause or clauses for establishing an executive council as a Council of State for the President of the United States; to consist of six members, two of which from the eastern, two from the middle, and two from the southern states; with a rotation and duration of office similar to those of the Senate; such council to be appointed by the legislature or by the Senate.”

Franklin: Seconded the motion. We seemed, he said, too much

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<sup>5</sup> In the printed journal, Madison is erroneously substituted for Mason.

to fear cabals in appointments by a number, and to have too much confidence in those of single persons. Experience showed that caprice, the intrigues of favorites and mistresses, were nevertheless the means most prevalent in monarchies. Among instances of abuse in such modes of appointment, he mentioned the many bad governors appointed in Great Britain for the colonies. He thought a council would not only be a check on a bad President, but be a relief to a good one.

G. Morris: The question of a council was considered in the committee, where it was judged that the President, by persuading his council to concur in his wrong measures, would acquire their protection for them.

Wilson: Approved of a council, in preference to making the Senate a party to appointments.

Dickinson: Was for a council. It would be a singular thing if the measures of the executive were not to undergo some previous discussion before the President.

Madison: Was in favor of the instruction to the committee proposed by Col. Mason.

The motion of Mason was negatived: Yeas 3 (Maryland, South Carolina, Georgia); nays 8 (New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina).

On the question of authorizing the President to call for the opinions of the heads of departments, in writing, it passed in the affirmative, New Hampshire only being no.<sup>6</sup>

The clause was then unanimously agreed to.

*Sept. 8* McHenry: Observed that the President had not yet been anywhere authorized to convene the Senate, and moved to amend Article X, Section 2, by striking out the words, "He may convene them (the legislature) on extraordinary occasions"; and inserting, "He may convene both, or either of the houses, on extraordinary occasions." This, he added, would also provide for the case of the Senate being in session, at the time of convening the legislature.

<sup>6</sup> Not so stated in the printed journal; but conformable to the result afterwards appearing.

Wilson: Said he should vote against the motion, because it implied that the Senate might be in session when the legislature was not, which he thought improper.

On the question: Yeas 7 (New Hampshire, Connecticut, New Jersey, Delaware, Maryland, North Carolina, Georgia); nays 4 (Massachusetts, Pennsylvania, Virginia, South Carolina).

**Conclusions in Convention.** The Vice President of the United States shall be president of the Senate, but shall have no vote, unless they be equally divided. Article I, Section 3, paragraph 4. Report of the Committee on Style and Arrangement. *Sept. 12*

Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States. If he approve, he shall sign it; but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house; by which it shall likewise be reconsidered; and if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the name of the persons voting for and against the bill shall be entered on the journal of each house, respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

Every order, resolution, or vote, to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment), shall be presented to the President of the United States; and before the same shall take effect shall be approved by him, or, being disapproved by him, shall be repassed by three-fourths of the Senate and House of Representatives, according to the rules and limita-



tions prescribed in the case of a bill. Article I, Section 7, paragraphs 3 and 4. Report of Committee on Style and Arrangement.

He [the President] shall hold his office during the term of four years, and, together with the Vice President, chosen for the same term, be elected in the following manner:

Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in Congress; but no senator or representative shall be appointed an elector, nor any person holding an office of trust or profit under the United States.

The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit, sealed, to the seat of the general government, directed to the president of the Senate. The president of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said House shall in like manner choose the President. But in choosing the President, the votes shall be taken by states, and not per capita, the representation from each state having one vote. A quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the President by the representatives, the person having the greatest number of votes of the electors shall be the Vice President. But if there should remain two or more who have equal votes,

the Senate shall choose from them, by ballot, the Vice President.

. . . .

No person except a natural born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President, and the Congress may by law provide for the case of removal, death, resignation or inability, both of the President and Vice President; declaring what officer shall then act as President; and such officer shall act accordingly, until the disability be removed, or the period for choosing another President arrive.

The President shall, at stated times, receive a fixed compensation for his services, which shall neither be increased nor diminished during the period for which he shall have been elected.

Before he enter on the execution of his office, he shall take the following oath or affirmation: "I, ———, do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my judgment and power, preserve, protect and defend the Constitution of the United States." Article II, Section 1. Report of Committee on Style and Arrangement.

The President shall be Commander-in-Chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States. He may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices. And he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

He shall have power by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the senators present concur; and he shall nominate, and, by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States whose appointments are not herein otherwise provided for.

The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session. Article II, Section 2. Report of Committee on Style and Arrangement.

He shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient. He may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States. Article II, Section 3. Report of Committee on Style and Arrangement.

The President, Vice President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors. Article II, Section 4. Report of Committee on Style and Arrangement.

Williamson: Moved to reconsider the clause requiring three-fourths of each house to overrule the negative of the President, in order to strike out three-fourths and insert two-thirds. He had, he remarked, himself proposed three-fourths instead of two-thirds; but he had since been convinced that the latter proportion was the best. The former puts too much in the power of the President.

Sherman: Was of the same opinion; adding that the states would

not like to see so small a minority, and the President, prevailing over the general voice. In making laws, regard should be had to the sense of the people, who are to be bound by them; and it was more probable that a single man should mistake or betray this sense than the legislature.

G. Morris: Considering the indifference between the two proportions numerically, it amounts, in one house, to two members only; and in the other, to not more than five; according to the numbers of which the legislature is at first to be composed. It is the interest, moreover, of the distant states, to prefer three-fourths, as they will be oftenest absent, and need the interposing check of the President. The excess rather than the deficiency of laws was to be dreaded. The example of New York shows that two-thirds is not sufficient to answer the purpose.

Hamilton: Added his testimony to the fact that two-thirds in New York had been ineffectual, either where a popular object or a legislative faction operated; of which he mentioned some instances.

Gerry: It is necessary to consider the danger on the other side also. Two-thirds will be a considerable, perhaps a proper, security. Three-fourths puts too much in the power of a few men. The primary object of the revisionary check of the President is not to protect the general interest but to defend his own department. If three-fourths be required a few senators, having hopes from the nomination of the President to offices, will combine with him and impede proper laws. Making the Vice President Speaker increases the danger.

Williamson: Was less afraid of too few than of too many laws. He was, most of all, afraid that the repeal of bad laws might be rendered too difficult by requiring three-fourths to overcome the dissent of the President.

Mason: Had always considered this as one of the most exceptionable parts of the system. As to the numerical argument of Mr. Gouverneur Morris, little arithmetic was necessary to understand that three-fourths was more than two-thirds, what-

ever the numbers of the legislature might be. The example of New York depended on the real merits of the laws. The gentlemen citing it had no doubt given their own opinions. But perhaps there were others of opposite opinions, who could equally paint the abuses on the other side. His leading view was to guard against too great an impediment to the repeal of laws.

- G. Morris: Dwelt on the danger to the public interest from the instability of laws, as the most to be guarded against. On the other side, there could be little danger. If one man in office will not consent where he ought, every fourth year another can be substituted. This term was not too long for fair experiments. Many good laws are not tried long enough to prove their merit. This is often the case with new laws opposed to old habits. The inspection laws of Virginia and Maryland, to which all are now so much attached, were unpopular at first.
- C. Pinckney: Was warmly in opposition to three-fourths, as putting a dangerous power in the hands of a few senators headed by the President.

Madison: When three-fourths was agreed to, the President was to be elected by the legislature, and for seven years. He is now to be elected by the people, and for four years. The object of the revisionary power is twofold—first, to defend the executive rights; secondly, to prevent popular or factious injustice. It was an important principle in this and in the state constitutions to check legislative injustice and encroachments. The experience of the states had demonstrated that their checks are insufficient. We must compare the danger from the weakness of two-thirds with the danger from the strength of three-fourths. He thought on the whole, the former was the greater. As to the difficulty of repeals, it was probable that in doubtful cases, the policy would soon take place, of limiting the duration of laws so as to require renewal instead of repeal.

The reconsideration being agreed to:

On the question to insert two-thirds in place of three-fourths:  
Yeas 6 (Connecticut, New Jersey, Maryland, North Carolina, South Carolina, Georgia); nays 4 (Massachusetts, Pennsylvania, Delaware, Virginia); divided 1 (New Hampshire).

Article I, Section 7: "If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him," etc.: Sept. 13

Madison: Moved to insert, between "after" and "it" in Article I, Section 7, the words, "the day on which" in order to prevent a question whether the day on which the bill be presented ought to be counted, or not, as one of the ten days.

Randolph: Seconded the motion.

G. Morris: The amendment is unnecessary. The law knows no fractions of days.

A number of members being very impatient, and calling for the question: Yeas 3 (Pennsylvania, Maryland, Virginia); nays 8 (New Hampshire, Massachusetts, Connecticut, New Jersey, Delaware, North Carolina, South Carolina, Georgia).

"Ex officio" struck out of the same section (Article I, Section 3) as superfluous, *nem. con.* Sept. 14

Article II, Section 1 (the sixth paragraph), the words "or the period for choosing another President arrive" were changed into "or a President shall be elected," conformably to a vote of the seventh of September. Sept. 15

Rutledge and Franklin: Moved to annex to the end of the seventh paragraph of Article II, Section 1, "and he (the President) shall not receive, within that period, any other emolument from the United States or any of them."

On which question: Yeas 7 (New Hampshire, Massachusetts, Pennsylvania, Maryland, Virginia, South Carolina, Georgia); nays 4 (Connecticut, New Jersey, Delaware, North Carolina).

Article II, Section 2: "He shall have power to grant reprieves and pardons for offenses against the United States, etc."

Randolph: Moved to except "cases of treason." The prerogative of pardon in these cases was too great a trust. The President may himself be guilty. The traitors may be his own instruments.

Mason: Supported the motion.

G. Morris: Had rather there should be no pardon for treason than let the power devolve on the legislature.

Wilson: Pardon is necessary for cases of treason, and is best placed in the hands of the executive. If he be himself a party to the guilt, he can be impeached and prosecuted.

King: Thought it would be inconsistent with the constitutional separation of the executive and legislative powers, to let the prerogative be exercised by the latter. A legislative body is utterly unfit for the purpose. They are governed too much by the passions of the moment. In Massachusetts, one assembly would have hung all the insurgents in that state; the next was equally disposed to pardon them all. He suggested the expedient of requiring the concurrence of the Senate in acts of pardon.

Madison: Admitted the force of objections to the legislature, but the pardon of treasons was so peculiarly improper for the President that he should acquiesce in the transfer of it to the former rather than leave it altogether in the hands of the latter. He would prefer to either, an association of the Senate as a council of advice with the President.

Randolph: Could not admit the Senate into a share of the power. The great danger to liberty lay in a combination between the President and that body.

Mason: The Senate has already too much power. There can be no danger of too much lenity in legislative pardons, as the Senate must concur; and the President moreover can require two-thirds of both houses.

On Randolph's motion: Yeas 2 (Virginia, Georgia); nays 8 (New Hampshire, Massachusetts, New Jersey, Pennsylvania, Delaware, Maryland, North Carolina, South Carolina); divided 1 (Connecticut).

G. Morris: Moved to annex to the end of Article II, Section 2 (the second paragraph), "but the Congress may by law vest the appointment of such inferior officers as they think proper in the President alone, in the courts of law, or in the heads of departments."

Sherman: Seconded the motion.

Madison: It does not go far enough, if it be necessary at all.

Superior officers below heads of departments ought in some cases to have the appointment of the lesser offices.

G. Morris: There is no necessity. Blank commissions can be sent. On the motion: Yeas 5 (New Hampshire, Connecticut, New Jersey, Pennsylvania, North Carolina); nays 5 (Massachusetts, Delaware, Virginia, South Carolina, Georgia); divided 1 (Maryland).

The motion being lost, by an equal division of votes, it was urged that it be put a second time, some such provision being too necessary to be omitted; and on a second question, it was agreed to, *nem. con.*

Article II, Section 1: The words, "and not per capita," were struck out, as superfluous; and the words, "by the representatives" also, as improper, the choice of President being in another mode, as well as eventually by the House of Representatives.

Article II, Section 2: After the words, "officers of the United States whose appointments are not otherwise provided for," were added the words, "and which shall be established by law."

The following was included in the completed Constitution, approved this day, as Article I, Section 3, paragraph 4: The Vice President of the United States shall be president of the Senate, but shall have no vote, unless they be equally divided.

Sept. 17

The final draft of the Constitution, approved this day, contained the following provisions for a federal executive, as Article I, Section 7:

Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States. If he approve, he shall sign it; but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house,



it shall become a law. But in all such cases, the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill, shall be entered on the journal of each house respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return; in which case it shall not be a law.

Every order, resolution, or vote, to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment), shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill. Paragraphs 2 and 3.

The final draft of the Constitution, approved this day, contained the following provisions for a federal executive, as Article II:

The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice President, chosen for the same term be elected as follows:

Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the State may be entitled in the Congress; but no senator or representative, or person holding any office of trust or profit under the United States, shall be appointed an elector.

The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the Senate. The president of the

Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose, by ballot, one of them for President; and if no person have a majority, then, from the five highest on the list, the said House shall, in like manner, choose the President. But, in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice President. But if there should remain two or more who have equal votes, the Senate shall choose from them, by ballot, the Vice President.

. . . .

No person, except a natural born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President, neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President, and the Congress may, by law, provide for the case of removal, death, resignation, or inability, both of the President and Vice President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

The President shall, at stated times, receive for his services a compensation, which shall neither be increased nor dimin-

ished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

Before he enters on the execution of his office, he shall take the following oath or affirmation:

“I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will to the best of my ability, preserve, protect, and defend, the Constitution of the United States.” Section 1.

The President shall be Commander-in-Chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices; and he shall have power to grant reprieves and pardons for offenses against the United States except in cases of impeachment.

He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the senators present concur; and he shall nominate, and, by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law. . . .

The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session. Section 2.

He shall, from time to time, give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take

care that the laws be faithfully executed; and shall commission all the officers of the United States. Section 3.

The President, Vice President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors. Section 4.

#### JUDICIAL EXPLICATIONS

Martin v. Mott, 12 Wheat. 19 (1827)

In re Neagle, 135 U.S. 1 (1890)

Burdick v. United States, 236 U.S. 79 (1915)

Ex parte Grossman, 267 U.S. 87 (1925)

The Pocket Veto Case, 279 U.S. 655 (1929)

United States v. Smith, 286 U.S. 6 (1932)

See Myers v. United States and Rathbun v. United States,  
cited in Chapter 19, "Safeguards"

CHAPTER 17  
THE FEDERAL JUDICIARY

TRIBUNALS AND JUDGES

THE SUPREME COURT AND INFERIOR COURTS

- May 29* Preliminaries in Committee of the Whole. Resolved, that a national judiciary be established; to consist of one or more supreme tribunals, and of inferior tribunals. . . . Proposition in Virginia Plan.
- June 4* It was then moved and seconded to proceed to the consideration of the ninth resolution submitted by Randolph; when, on motion to agree to the first clause, namely, "Resolved, that a national judiciary be established," it passed in the affirmative, *nem. con.*
- It was then moved and seconded to add these words to the first clause of the ninth resolution, namely, "to consist of one supreme tribunal, and of one or more inferior tribunals"; which passed in the affirmative.
- June 5* The words "one or more" were struck out before "inferior tribunals," as an amendment to the last clause of the ninth resolution.
- Wilson: Gave notice that he should at a future day move for a reconsideration of that clause which respects "inferior tribunals."
- Rutledge: Having obtained a rule for reconsideration of the clause for establishing *inferior* tribunals under the national authority, now moved that that part of the clause in the ninth resolution should be expunged; arguing that the state tri-

bunals might and ought to be left in all cases to decide in the first instance, the right of appeal to the supreme national tribunal being sufficient to secure the national rights and uniformity of judgments; that it was making an unnecessary encroachment on the jurisdiction of the states, and creating unnecessary obstacles to their adoption of the new system.

Sherman: Seconded the motion.

Madison: Observed that unless inferior tribunals were dispersed throughout the republic with *final* jurisdiction in *many* cases, appeals would be multiplied to a most oppressive degree; that, besides, an appeal would not in many cases be a remedy. What was to be done after improper verdicts, in state tribunals, obtained under the biased directions of a dependent judge, or the local prejudices of an undirected jury? To remand the cause for a new trial would answer no purpose. To order a new trial at the supreme bar would oblige the parties to bring up their witnesses, though ever so distant from the seat of the court. An effective judiciary establishment commensurate to the legislative authority was essential. A government, without a proper executive and judiciary, would be the mere trunk of a body, without arms or legs to act or move.

Wilson: Opposed the motion on like grounds. He said the admiralty jurisdiction ought to be given wholly to the national government, as it related to cases not within the jurisdiction of particular states, and to a scene in which controversies with foreigners would be most likely to happen.

Sherman: Was in favor of the motion. He dwelt chiefly on the supposed expensiveness of having a new set of courts, when the existing state courts would answer the same purpose.

Dickinson: Contended strongly that if there was to be a national legislature, there ought to be a national judiciary, and that the former ought to have authority to institute the latter.

On the question for Rutledge's motion to strike out "inferior tribunals," it passed in the affirmative: Yeas 6 (Connecticut, New York, New Jersey, North Carolina, South Carolina, Georgia); nays 4 (Pennsylvania, Delaware, Maryland, Virginia); divided 1 (Massachusetts).

Wilson and Madison: Then moved, in pursuance of the idea expressed above by Mr. Dickinson, to add to the ninth resolution the words following: "that the national legislature be empowered to institute inferior tribunals." They observed that there was a distinction between establishing such tribunals absolutely and giving a discretion to the legislature to establish or not to establish them. They repeated the necessity of some such provision.

Butler: The people will not bear such innovations. The states will revolt at such encroachments. Supposing such an establishment to be useful, we must not venture on it. We must follow the example of Solon, who gave the Athenians not the best government he could devise, but the best they would receive.

King: Remarked, as to the comparative expense, that the establishment of inferior tribunals would cost infinitely less than the appeals that would be prevented by them.

On this question, as moved by Wilson and Madison: Yeas 8 (Massachusetts, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Georgia); nays 2 (Connecticut, South Carolina); divided 1 (New York).

*June 19*    **Fundamentals in Convention.** Resolved, that a national judiciary be established, to consist of one supreme tribunal. . . . Eleventh resolution, Committee of the Whole.

Resolved, that the national legislature be empowered to appoint inferior tribunals. Twelfth resolution, Committee of the Whole.

*July 18*    The eleventh resolution, "that a national judiciary shall be established to consist of one supreme tribunal," agreed to, *nem. con.*

The twelfth resolution, "that the national legislature be empowered to appoint inferior tribunals," being taken up:

Butler: Could see no necessity for such tribunals. The state tribunals might do the business.

L. Martin: Concurred. They will create jealousies and opposi-

tions in the state tribunals, with the jurisdiction of which they will interfere.

Gorham: There are in the states already federal courts, with jurisdiction for trial of piracies, etc., committed on the seas. No complaints have been made by the states or the courts of the states. Inferior tribunals are essential to render the authority of the national legislature effectual.

Randolph: Observed that the courts of the states cannot be trusted with the administration of the national laws. The objects of jurisdiction are such as will often place the general and local policy at variance.

G. Morris: Urged also the necessity of such a provision.

Sherman: Was willing to give the power to the legislature, but wished them to make use of the state tribunals, whenever it could be done with safety to the general interest.

Mason: Thought many circumstances might arise, not now to be foreseen, which might render such a power absolutely necessary.

On the question for agreeing to the twelfth resolution, empowering the national legislature to appoint inferior tribunals: It was agreed to, *nem. con.*

**Agreements Referred to Committee of Detail.** Resolved, that a national judiciary be established, to consist of one supreme tribunal. . . . Fourteenth resolution on fundamentals. July 26

Resolved, that the national legislature be empowered to appoint inferior tribunals. Fifteenth resolution on fundamentals.

**Details in Convention.** The legislature of the United States shall have the power . . . to constitute tribunals inferior to the Supreme Court. Article VII, Section 1, clause 10, Committee of Detail. Aug. 6

The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts, as shall, when necessary, from time to time, be constituted by the legislature



of the United States. Article XI, Section 1, Committee of Detail.

- Aug. 17* The clause, "to constitute inferior tribunals," was agreed to, *nem. con.*
- Aug. 27* Johnson: Suggested that the judicial power ought to extend to equity as well as law; and moved to insert the words "both in law and equity" after the words, "United States," in the first line of the first section.  
Read: Objected to vesting these powers in the same court.  
On the question: Yeas 6 (New Hampshire, Connecticut, Pennsylvania, Virginia, South Carolina, Georgia); nays 2 (Delaware, Maryland); absent 3 (Massachusetts, New Jersey, North Carolina).
- On the question to agree to Article XI, Section 1, as amended, the states were the same as on the preceding question.
- Sept. 12* **Conclusions in Convention.** They [Congress] shall have power . . . to constitute tribunals inferior to the Supreme Court. Article I, Section 8, clause 10. Report of Committee on Style and Arrangement.  
The judicial power of the United States, both in law and equity, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. . . . Article III, Section 1. Report of Committee on Style and Arrangement.
- Sept. 17* The above recommendations of the Committee on Style and Arrangement were included in the final draft of the Constitution adopted this day.

#### JUDGES: APPOINTMENT, TERM, AND SALARIES

- May 29* **Preliminaries in Committee of the Whole.** Resolved, that a national judiciary be established . . . to be chosen by the national legislature; to hold their offices during good behavior, and to receive punctually, at stated times, fixed compensation for their services, in which no increase or diminution shall be made, so as to affect the persons actually in office at the same

time of such increase or diminution. . . . Proposition in Virginia Plan.

The clause, "that the national judiciary be chosen by the national legislature," being under consideration: *June 5*

Wilson: Opposed the appointment of judges by the national legislature. Experience showed the impropriety of such appointments by numerous bodies. Intrigue, partiality, and concealment were the necessary consequences. A principal reason for unity in the executive was that officers might be appointed by a single, responsible person.

Rutledge: Was by no means disposed to grant so great a power to any single person. The people will think we are leaning too much towards monarchy. He was against establishing any national tribunal, except a single supreme one. The state tribunals are most proper to decide in all cases in the first instance.

Franklin: Observed that the two modes of choosing the judges had been mentioned, to wit, by the legislature, and by the executive. He wished such other modes to be suggested as might occur to other gentlemen; it being a point of great moment. He would mention one which he had understood was practised in Scotland. He then, in a brief and entertaining manner, related a Scotch mode, in which the nomination proceeded from the lawyers, who always selected the ablest of the profession, in order to get rid of him, and share his practice among themselves. It was here, he said, the interest of the electors to make the best choice, which should always be made the case if possible.

Madison: Disliked the election of the judges by the legislature, or any numerous body. Besides the danger of intrigue and partiality, many of the members were not judges of the requisite qualifications. The legislative talents, which were very different from those of a judge, commonly recommended men to the favor of legislative assemblies. It was known, too, that the accidental circumstances of presence and absence, of being a member or not a member, had a very undue influence on the appointment. On the other hand, he was not satisfied with re-

ferring the appointment to the executive. He rather inclined to give it to the senatorial branch, as numerous enough to be confided in; as not so numerous as to be governed by the motives of the other branch; and as being sufficiently stable and independent to follow their deliberate judgments. He hinted this only, and moved that the *appointment by the legislature* might be struck out, and a blank left, to be hereafter filled on maturer reflection.

Wilson: Seconds it.

On the question for striking out: Yeas 9 (Massachusetts, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Georgia); nays 2 (Connecticut, South Carolina).

C. Pinckney: Gave notice that when the clause respecting the appointment of the judiciary should again come before the Committee, he should move to restore the "appointment by the national legislature."

The following clauses of the ninth resolution were agreed to, viz., "to hold their offices during good behavior, and to receive punctually, at stated times, a fixed compensation for their services, in which no increase nor diminution shall be made so as to affect the persons actually in office at the time of such increase or diminution."

*June 13* Preliminaries in Committee of the Whole. C. Pinckney and Sherman: Moved to insert after the words "one supreme tribunal," the words "the judges of which to be appointed by the national legislature."

Madison: Objected to an appointment by the whole legislature. Many of them are incompetent judges of the requisite qualifications. They were too much influenced by their partialities. The candidate who was present, who had displayed a talent for business in the legislative field, who had, perhaps, assisted ignorant members in business of their own, or of their constituents, or used other winning means, would, without any of the essential qualifications for an expositor of the laws, prevail over a competitor not having these recommendations, but

possessed of every necessary accomplishment. He proposed that the appointment should be made by the Senate, which, as a less numerous and more select body, would be more competent judges, and which was sufficiently numerous to justify such a confidence in them.

Sherman and C. Pinckney: Withdrew their motion, and the appointment by the Senate was agreed to, *nem. con.*

**Fundamentals in Convention.** Resolved, that a national judiciary be established . . . the judges of which shall be appointed by the second branch of the national legislature, to hold their offices during good behavior, and to receive punctually, at stated times, a fixed compensation for their services, in which no increase or diminution shall be made, so as to affect the persons actually in office at the time of such increase or diminution. Eleventh resolution, Committee of the Whole.

June 19

On the clause, "The judges of which to be appointed by the second branch of the national legislature":

July 18

Gorham: Would prefer an appointment by the second branch to an appointment by the whole legislature; but he thought even that branch too numerous and too little personally responsible to ensure a good choice. He suggested that the judges be appointed by the executive with the advice and consent of the second branch, in the mode prescribed by the constitution of Massachusetts. This mode had been long practiced in that country and was found to answer perfectly well.

Wilson: Would still prefer an appointment by the executive; but if that could not be attained, would prefer in the next place the mode suggested by Mr. Gorham. He thought it his duty, however, to move in the first instance, "that the judges be appointed by the executive."

G. Morris: Seconded the motion.

L. Martin: Was strenuous for an appointment by the second branch. Being taken from all the states, it would be best informed of characters, and most capable of making a fit choice.

Sherman: Concurred in the observations of Mr. Martin, adding

that the judges ought to be diffused, which would be more likely to be attended to by the second branch than by the executive.

Mason: The mode of appointing the judges may depend in some degree on the mode of trying impeachments of the executive. If the judges were to form a tribunal for that purpose, they surely ought not to be appointed by the executive. There were insuperable objections besides against referring the appointment to the executive. He mentioned, as one, that as the seat of government must be in some one state; and as the executive would remain in office for a considerable time, for four, five, or six years at least, he would insensibly form local and personal attachments within the particular state that would deprive equal merit elsewhere of an equal chance of promotion.

Gorham: As the executive will be responsible, in point of character at least, for a judicious and faithful discharge of his trust, he will be careful to look through all the states for proper characters. The senators will be as likely to form their attachments at the seat of government where they reside as the executive. If they cannot get the man of the particular state to which they may respectively belong, they will be indifferent to the rest. Public bodies feel no personal responsibility, and give full play to intrigue and cabal. Rhode Island is a full illustration of the insensibility to character produced by a participation of numbers in dishonorable measures, and of the length to which a public body may carry wickedness and cabal.

G. Morris: Supposed it would be improper for an impeachment of the executive to be tried before the judges. The latter would in such case be drawn into intrigues with the legislature, and an impartial trial would be frustrated. As they would be much about the seat of government, they might even be previously consulted, and arrangements might be made for a prosecution of the executive. He thought, therefore, that no argument could be drawn from the probability of such a plan of impeachments against the motion before the House.

Madison: Suggested that the judges might be appointed by the

executive, with the concurrence of one-third at least of the second branch. This would unite the advantage of responsibility in the executive, with the security afforded in the second branch against any incautious or corrupt nomination by the executive.

Sherman: Was clearly for an election by the Senate. It would be composed of men nearly equal to the executive, and would of course have on the whole more wisdom. They would bring into their deliberations a more diffusive knowledge of characters. It would be less easy for candidates to intrigue with them than with the executive magistrate. For these reasons he thought there would be a better security for a proper choice in the Senate than in the executive.

Randolph: It is true that when the appointment of the judges was vested in the second branch an equality of votes had not been given to it. Yet he had rather leave the appointment there than give it to the executive. He thought the advantage of personal responsibility might be gained in the Senate by requiring the respective votes of the members to be entered on the journal. He thought, too, that the hope of receiving appointments would be more diffusive if they depended on the Senate, the members of which would be diffusively known, than if they depended on a single man who could not be personally known to a very great extent; and consequently that opposition to the system would be so far weakened.

Bedford: Thought there were solid reasons against leaving the appointment to the executive. He must trust more to information than the Senate. It would put it in his power to gain over the larger states by gratifying them with a preference of their citizens. The responsibility of the executive, so much talked of, was chimerical. He could not be punished for mistakes.

Gorham: Remarked that the Senate could have no better information than the executive. They must like him trust to information from the members belonging to the particular states where the candidate resided. The executive would certainly

be more answerable for a good appointment as the whole blame of a bad one would fall on him alone. He did not mean that he would be answerable under any other penalty than that of public censure, which with honorable minds was a sufficient one.

On the question for referring the appointment of the judges to the executive instead of the second branch: Yeas 2 (Massachusetts, Pennsylvania); nays 6 (Connecticut, Delaware, Maryland, Virginia, North Carolina, South Carolina); absent 1 (Georgia).

Gorham: Moved "that the judges be nominated and appointed by the executive, by and with the advice and consent of the second branch; and every such nomination shall be made at least —— days prior to such appointment." This mode, he said, had been ratified by the experience of a hundred and forty years in Massachusetts. If the appointment should be left to either branch of the legislature, it will be a mere piece of jobbing.

G. Morris: Seconded and supported the motion.

Sherman: Thought it less objectionable than an absolute appointment by the executive; but disliked it as too much fettering the Senate.

On the question of Gorham's motion: Yeas 4 (Massachusetts, Pennsylvania, Maryland, Virginia); nays 4 (Connecticut, Delaware, North Carolina, South Carolina); absent 1 (Georgia).

Madison: Moved "that the judges should be nominated by the executive, and such nomination should become an appointment if not disagreed to within —— days by two-thirds of the second branch."

G. Morris: Seconded the motion.

By common consent, the consideration of it was postponed. "To hold their offices during good behavior, and to receive fixed salaries," agreed to, *nem. con.*

"In which (salaries of judges) no increase or diminution shall be made so as to affect the persons actually in office at the time."

G. Morris: Moved to strike out "or increase." He thought the legislature ought to be at liberty to increase salaries as cir-

cumstances might require; and that this would not create any improper dependence in the judges.

Franklin: Was in favor of the motion. Money may not only become plentier; but the business of the department may increase, as the country becomes more populous.

Madison: The dependence will be less if the *increase alone* should be permitted; but it will be improper even so far to permit a dependence. Whenever an increase is wished by the judges, or may be in agitation in the legislature, an undue complaisance in the former may be felt towards the latter. If at such a crisis there should be in court suits to which leading members of the legislature may be parties, the judges will be in a situation which ought not to be suffered, if it can be prevented. The variations in the value of money may be guarded against by taking for a standard wheat or some other thing of permanent value. The increase of business will be provided for by an increase of the number who are to do it. An increase of salaries may easily be so contrived as not to affect persons in office.

G. Morris: The value of money may not only alter, but the state of society may alter. In this event, the same quantity of wheat, the same value, would not be the same compensation. The amount of salaries must always be regulated by the manners and the style of living in a country. The increase of business cannot be provided for in the supreme tribunal, in the way that has been mentioned. All the business of a certain description, whether more or less, must be done in that single tribunal. Additional labor alone in the judges can provide for additional business. Additional compensation, therefore, ought not to be prohibited.

On the question for striking out "or increase": Yeas 6 (Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, South Carolina); nays 2 (Virginia, North Carolina); absent 1 (Georgia).

The whole clause, as amended, was then agreed to, *nem. con.*

The motion made by Madison on the eighteenth of July and then postponed, "that the judges should be nominated by

July 21



the executive, and such nominations become appointments unless disagreed to by two-thirds of the second branch of the legislature," was now resumed.

Madison: Stated as his reasons for the motion: First, that it secured the responsibility of the executive, who would in general be more capable and likely to select fit characters than the legislature, or even the second branch of it, who might hide their selfish motives under the number concerned in the appointment. Secondly, that in case of any flagrant partiality or error in the nomination, it might be fairly presumed that two-thirds of the second branch would join in putting a negative on it. Thirdly, that as the second branch was very differently constituted, when the appointment of the judges was formerly referred to it, and was now to be composed of equal votes from all the states, the principle of compromise which had prevailed in other instances required in this that there should be a concurrence of two authorities, in one of which the people, in the other the states, should be represented. The executive magistrate would be considered as a national officer, acting for and equally sympathizing with every part of the United States. If the second branch alone should have this power, the judges might be appointed by a minority of the people, though by a majority of the states; which could not be justified on any principle, as their proceedings were to relate to the people rather than to the states; and as it would, moreover, throw the appointments entirely into the hands of the northern states, a perpetual ground of jealousy and discontent would be furnished to the southern states.

C. Pinckney: Was for placing the appointment in the second branch exclusively. The executive will possess neither the requisite knowledge of characters, nor confidence of the people, for so high a trust.

Randolph: Would have preferred the mode of appointment proposed formerly by Mr. Gorham, as adopted in the constitution of Massachusetts, but thought the motion depending so great an improvement of the clause as it stands, that he anxiously wished it success. He laid great stress on the respon-

sibility of the executive, as a security for fit appointments. Appointments by the legislatures have generally resulted from cabal, from personal regard, or some other consideration than a title derived from the proper qualifications. The same inconveniences will proportionally prevail, if the appointments be referred to either branch of the legislature, or to any other authority administered by a number of individuals.

Ellsworth: Would prefer a negative in the executive on a nomination by the second branch, the negative to be overruled by a concurrence of two-thirds of the second branch, to the mode proposed by the motion, but preferred an absolute appointment by the second branch to either. The executive will be regarded by the people with a jealous eye. Every power for augmenting unnecessarily his influence will be disliked. As he will be stationary, it was not to be supposed he could have a better knowledge of characters. He will be more open to caresses and intrigues than the Senate. The right to supersede his nomination will be ideal only. A nomination under such circumstances will be equivalent to an appointment.

G. Morris: Supported the motion. First, the states, in their corporate capacity, will frequently have an interest staked on the determination of the judges. As in the Senate the states are to vote, the judges ought not to be appointed by the Senate. Next to the impropriety of being judge in one's own cause, is the appointment of the judge. Secondly, it had been said, the executive would be uninformed of characters. The reverse was the truth. The Senate will be so. They must take the character of candidates from the flattering pictures drawn by their friends. The executive, in the necessary intercourse with every part of the United States required by the nature of his administration, will or may have the best possible information. Thirdly, it had been said that a jealousy would be entertained of the executive. If the executive can be safely trusted with the command of the army, there cannot surely be any reasonable ground of jealousy in the present case. He added that if the objections against an appointment of the executive by the legislature had the weight that had been allowed, there

must be some weight in the objection to an appointment of the judges by the legislature, or by any part of it.

Gerry: The appointment of the judges, like every other part of the Constitution, should be so modeled as to give satisfaction both to the people and to the states. The mode under consideration will give satisfaction to neither. He could not conceive that the executive could be as well informed of characters throughout the Union as the Senate. It appeared to him, also, a strong objection, that two-thirds of the Senate were required to reject a nomination of the executive. The Senate would be constituted in the same manner as Congress, and the appointments of Congress have been generally good.

Madison: Observed that he was not anxious that two-thirds should be necessary, to disagree to a nomination. He had given this form to his motion, chiefly to vary it the more clearly from one which had just been rejected. He was content to obviate the objection last made, and accordingly so varied the motion as to let a majority reject.

Mason: Found it his duty to differ from his colleagues in their opinions and reasonings on this subject. Notwithstanding the form of the proposition, by which the appointment seemed to be divided between the executive and the Senate, the appointment was substantially vested in the former alone. The false complaisance which usually prevails in such cases will prevent a disagreement to the first nominations. He considered the appointment by the executive as a dangerous prerogative. It might even give him an influence over the judiciary department itself. He did not think the difference of interest between the northern and southern states could be properly brought into this argument. It would operate, and require some precautions in the case of regulating navigation, commerce and imposts; but he could not see that it had any connection with the judiciary department.

On the question, the motion being now, "that the executive should nominate, and such nominations should become appointments unless disagreed to by the Senate": Yeas 3 (Massachusetts, Pennsylvania, Virginia); nays 6 (Connecticut, Dela-

ware, Maryland, North Carolina, South Carolina, Georgia). On the question for agreeing to the clause as it stands, by which the judges are to be appointed by the second branch: Yeas 6 (Connecticut, Delaware, Maryland, North Carolina, South Carolina, Georgia); nays 3 (Massachusetts, Pennsylvania, Virginia); so it passed in the affirmative.

**Agreements Referred to Committee of Detail.** Resolved, that a national judiciary be established, . . . the judges of which shall be appointed by the second branch of the national legislature; to hold their offices during good behavior; to receive punctually at stated times, a fixed compensation for their services, in which no diminution shall be made so as to affect the persons actually in office at the time of such diminution. Fourteenth resolution on fundamentals. *July 26*

**Details in Convention.** The Senate of the United States shall have power . . . to appoint . . . judges of the Supreme Court. Article IX, Section 1, Committee of Detail. *Aug. 6*

The judges of the Supreme Court, and of the inferior courts, shall hold their offices during good behavior. They shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office. Article XI, Section 2, Committee of Detail.

G. Morris: Argued against the appointment of officers by the Senate. He considered the body as too numerous for that purpose; as subject to cabal; and as devoid of responsibility. If judges were to be tried by the Senate, according to a late report of a committee, it was particularly wrong to let the Senate have the filling of vacancies which its own decrees were to create. *Aug. 23*

Wilson: Was of the same opinion and for like reasons.

Dickinson: Moved an amendment to Article XI, Section 2, after the words "good behavior," the words "provided that they may be removed by the executive on the application by the Senate and House of Representatives." *Aug. 27*

Gerry: Seconded the motion.

G. Morris: Thought it a contradiction in terms, during good

behavior, and yet be removable without a trial. Besides, it was fundamentally wrong to subject judges to so arbitrary an authority.

Sherman: Saw no contradiction or impropriety, if this were made a part of the constitutional regulation of the judiciary establishment. He observed that a like provision was contained in the British statutes.

Rutledge: If the Supreme Court is to judge between the United States and particular states, this alone is an insuperable objection to the motion.

Wilson: Considered such a provision in the British government as less dangerous than here; the House of Lords and House of Commons being less likely to concur on the same occasions. Chief Justice Holt, he remarked, had *successively* offended, by his independent conduct, both houses of Parliament. Had this happened at the same time, he would have been ousted. The judges would be in a bad situation if made to depend on any gust of faction which might prevail in the two branches of our government.

Randolph: Opposed the motion, as weakening too much the independence of the judges.

Dickinson: Was not apprehensive that the legislature, composed of different branches, constructed on such different principles, would improperly unite for the purpose of displacing a judge.

On the question for agreeing to Dickinson's motion, it was negatived: Yeas 1 (Connecticut); nays 7 (New Hampshire, Pennsylvania, Delaware, Maryland, Virginia, South Carolina, Georgia); absent 3 (Massachusetts, New Jersey, North Carolina).

On the question on Article XI, Section 2, as reported, Delaware and Maryland only, no.

Madison and McHenry: Moved to reinstate the words "increased or" before the word "diminished" in Article XI, Section 2.

G. Morris: Opposed it, for reasons urged by him on a former occasion.

Mason: Contended strenuously for the motion. There was no weight, he said, in the argument drawn from changes in the value of the metals, because this might be provided for by an

increase of salaries, so made as not to affect persons in office;—and this was the only argument on which much stress seemed to have been laid.

C. C. Pinckney: The importance of the judiciary will require men of the first talents: large salaries will therefore be necessary, larger than the United States can afford in the first instance. He was not satisfied with the expedient mentioned by Col. Mason. He did not think it would have a good effect, or a good appearance, for new judges to come in with higher salaries than the old ones.

G. Morris: Said the expedient might be evaded, and therefore amounted to nothing. Judges might resign, and then be reappointed to increased salaries.

On the question: Yeas 1 (Virginia); nays 5 (New Hampshire, Connecticut, Pennsylvania, Delaware, South Carolina); divided 1 (Maryland); absent 4 (Massachusetts, New Jersey, North Carolina, Georgia).

Randolph and Madison: Then moved to add the following words to Article XI, Section 2: “nor increased by any act of the legislature which shall operate before the expiration of three years after the passing thereof.”

On the question: Yeas 2 (Maryland, Virginia); nays 5 (New Hampshire, Connecticut, Pennsylvania, Delaware, South Carolina); absent 4 (Massachusetts, New Jersey, North Carolina, Georgia).

Brearley, for the Committee on Unfinished Business, submitted the following proposition: The President, by and with the advice and consent of the Senate, shall have power to . . . appoint . . . judges of the Supreme Court. . . . Sept. 4

On the question on these words in the clause, viz.: “He shall nominate, and, by and with the advice and consent of the Senate, shall appoint . . . judges of the Supreme Court,” it was agreed to, *nem. con.* Sept. 7

Conclusions in Convention. He [the President] shall have power by and with the advice and consent of the Senate to . . . appoint . . . judges of the Supreme Court. . . . Article II, Sept. 12

Section 2, paragraph 2. Report of Committee on Style and Arrangement.

. . . The judges both of the Supreme and inferior courts, shall hold their offices during good behavior; and shall at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office. Article III, Section 1. Report of Committee on Style and Arrangement.

*Sept. 17* The above recommendations of the Committee on Style and Arrangement were included in the final draft of the Constitution adopted this day.

### JURISDICTION

*May 29* Preliminaries in Committee of the Whole. Resolved . . . That the jurisdiction of the inferior tribunals shall be to hear and determine, in the first instance, and of the supreme tribunal to hear and determine, in the dernier resort, all piracies and felonies on the high seas; captures from an enemy; cases in which foreigners, or citizens of other states, applying to such jurisdictions, may be interested; or which respect the collection of the national revenue; impeachments of any national officers, and questions which may involve the national peace and harmony. Proposition in Virginia Plan.

*June 12* It was moved and seconded to alter the ninth resolution so as to read, "that the jurisdiction of the supreme tribunal shall be to hear and determine, in the dernier resort, all piracies, felonies, etc."

It was moved and seconded to strike out "all piracies and felonies on the high seas," which was agreed to.

It was moved and agreed to strike out "all captures from an enemy."

It was moved and agreed to strike out "other states" and insert "two distinct states of the Union."

*June 13* The latter part of the clause relating to the jurisdiction of the national tribunals was struck out, *nem. con.*, in order to leave full room for their organization.

Randolph and Madison: Then moved the following resolution respecting a national judiciary, viz., "that the jurisdiction of the national judiciary shall extend to cases which respect the collection of the national revenue, impeachments of any national officers, and questions which involve the national peace and harmony."

Agreed to.

**Fundamentals in Convention.** Resolved, that the jurisdiction of the national judiciary shall extend to all cases which respect the collection of the national revenue, impeachments of any national officers, and questions which involve the national peace and harmony. Thirteenth resolution, Committee of the Whole. *June 19*

The clause of "impeachments of national officers" was struck out, on motion for the purpose. *July 18*

The thirteenth resolution, "The jurisdiction of the national judiciary, etc.," being then taken up, several criticisms having been made on the definition, it was proposed by Madison so to alter it as to read thus: "that the jurisdiction shall extend to all cases arising under the national laws; and to such other questions as may involve the national peace and harmony," which was agreed to, *nem. con.*

**Agreements Referred to Committee of Detail.** Resolved, that the jurisdiction of the national judiciary shall extend to cases arising under laws passed by the general legislature; and to such other questions as involve the national peace and harmony. Sixteenth resolution on fundamentals. *July 26*

**Details in Convention.** The jurisdiction of the Supreme Court shall extend to all cases arising under laws passed by the legislature of the United States; to all cases affecting ambassadors, other public ministers and consuls; to the trial of impeachments of officers of the United States; to all cases of admiralty and maritime jurisdiction; to controversies between two or more states (except such as shall regard territory or jurisdiction); between a state and citizens of another state; between citizens of different states; and between a state, or the citizens *Aug. 6*



thereof, and foreign states, citizens or subjects. In cases of impeachment, cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, this jurisdiction shall be original. In all the other cases before-mentioned, it shall be appellate, with such exceptions, and under such regulations, as the legislature shall make. The legislature may assign any part of the jurisdiction above mentioned (except the trial of the President of the United States) in the manner, and under the limitations which it shall think proper, to such inferior courts, as it shall constitute from time to time. Article XI, Section 3, Committee of Detail.

*Aug. 22* Rutledge submitted the following report for the Committee of Detail: Between the fourth and fifth lines of the third section of the eleventh article, after the word "controversies" insert, "between the United States and an individual state, or the United States and an individual person."

*Aug. 27* Article XI, Section 3, being taken up, the following clause was postponed, viz., "to the trial of impeachments of officers of the United States"; by which the jurisdiction of the Supreme Court was extended to such cases.

Madison and G. Morris: Moved to insert, after the word "controversies," the words, "to which the United States shall be a party"; which was agreed to, *nem. con.*

Johnson: Moved to insert the words, "this Constitution and the" before the word "laws."

Madison: Doubted whether it was not going too far, to extend the jurisdiction of the court generally to cases arising under the Constitution, and whether it ought not to be limited to cases of a judiciary nature. The right of expounding the Constitution, in cases not of this nature, ought not to be given to that department.

The motion of Johnson was agreed to, *nem. con.*, it being generally supposed that the jurisdiction given was constructively limited to cases of a judiciary nature.

On motion of Rutledge, the words "passed by the legislature" were struck out; and after the words "United States," were

inserted, *nem. con.*, the words "and treaties made or which shall be made under their authority," conformably to a preceding amendment in another place.

The clause, "in cases of impeachment," was postponed.

G. Morris: Wished to know what was meant by the words: "In all the cases before mentioned it (jurisdiction) shall be appellate, with such exceptions, etc.,"—whether it extended to matters of fact as well as law—and to cases of common law, as well as civil law.

Wilson: The committee, he believed, meant facts as well as law, and common as well as civil law. The jurisdiction of the federal court of appeals had, he said, been so construed.

Dickinson: Moved to add, after the word "appellate," the words "both as to law and fact"; which was agreed to, *nem. con.*

Madison and G. Morris: Moved to strike out the beginning of the third section, "The jurisdiction of the Supreme Court" and to insert the words, "the judicial power," which was agreed to, *nem. con.*

The following motion was disagreed to, to wit, to insert, "In all the other cases before mentioned, the judicial power shall be exercised in such manner as the legislature shall direct": Yeas 2 (Delaware, Virginia); nays 6 (New Hampshire, Connecticut, Pennsylvania, Maryland, South Carolina, Georgia).

On the question for striking out the last sentence of the third section, "The legislature may assign, etc."; it passed, *nem. con.*

Sherman: Moved to insert, after the words, "between citizens of different states," the words, "between citizens of the same state claiming lands under grants of different states,"—according to the provision in the ninth Article of the Confederation; which was agreed to, *nem. con.*

Article XI, Section 3, being considered—It was moved to strike out the words, "it shall be appellate," and to insert the words, "the Supreme Court shall have appellate jurisdiction,"—in order to prevent uncertainty whether "it" referred to the *Supreme Court*, or to the *judicial power*. Aug. 28

On the question: Yeas 9 (New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Virginia, North Carolina,

South Carolina, Georgia); nays 1 (Maryland); absent 1 (New Jersey).

- Sept. 12* **Conclusions in Convention.** The judicial power shall extend to all cases, both in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority. To all cases affecting ambassadors, other public ministers and consuls. To all cases of admiralty and maritime jurisdiction. To controversies to which the United States shall be a party. To controversies between two or more states; between a state, and citizens of another state; between citizens of different states; between citizens of the same state claiming lands under grants of different states; and between a state, or the citizens thereof, and foreign states, citizens or subjects. Article III, Section 2, paragraph 1. Report of Committee on Style and Arrangement.
- Sept. 17* The above recommendation of the committee was included in the final draft of the Constitution adopted this day.

#### JUDICIAL EXPLICATIONS

Martin v. Hunter's Lessee, 1 Wheat. 304 (1816)  
 The Genesee Chief *et al.* v. Fitzhugh, 12 How. 443 (1851)  
 United States v. Texas, 143 U.S. 621 (1892)  
 South Carolina v. United States, 199 U.S. 437 (1905)  
 Muskrat v. United States, 219 U.S. 346 (1911)  
 Virginia v. West Virginia, 246 U.S. 565 (1918)  
 Miles v. Graham, 268 U.S. 501 (1925)

#### SURVEY OF PROCEEDINGS ON EXECUTIVE AND JUDICIAL ORGANS OF THE FEDERAL GOVERNMENT

[Insertion by Compiler]

**Type and Powers of the Federal Executive.** The genius of government built on English foundations consists largely of the unity, the responsibility, and the leadership of its executives. It originated in such medieval monarchical types as Henry

II and Edward I, but developed away from the absolutism of that type, slowly shaping in the course of centuries the characteristic features of the modern British cabinet system. The culmination of its development in Great Britain was the establishment of a single executive, the Prime Minister, possessing far-reaching legislative and administrative powers which he exercises in the name of the King, but subject to the control of Parliament. In this broad fashion did the unity, the leadership, and the responsiveness of the executive evolve in the mother country, which in these days of totalitarian tendencies thoughtful people will pronounce the glory of popular government.

The planting of English colonies in America occurred before the cabinet system was fully developed. Among the inherited political institutions the colonists brought with them was the single executive, used in all of the colonies and subsequently in all of the states before the drafting of the Constitution. But this transplanted executive was modified by new influences in the new land and became in the course of time a single executive of what may be called the presidential variety. The presidential executive evolved in America enjoys greater independence of the legislature than its English prototype, but in both countries the unity, responsibility, and leadership so essential in a government of law are attributes of an executive subjected to constitutional limitations and to restraints originating in the legislature. Thus English and American political science underlying the executive is fundamentally the same.

With such a historical and institutional background it was inevitable that the federal executive should be single rather than plural. Randolph's arguments and fears were answered by the facts of history. The same repository of governmental practices in England and America made it necessary to confer upon this single executive certain powers—international, legislative, administrative, military, and judicial in character—subject in most cases "to the advice and consent of the Senate." After one hundred and fifty years of trial in peace

and war it is not likely that a new body of constitution-makers would change either the type or the powers of our federal executive.

**Election, Term, and Compensation of the Federal Executive.**

When the Committee of the Whole reached the proposition in the Virginia plan relative to the election of the executive, delegates ignored the suggestive remarks of Sherman on the proper relation between agencies for law enforcement and the legislature whose will they enforce, containing ideas that might have been developed into a cabinet system of the modern type. The majority preferred to consider the establishment of a separate department headed by a national organ, endowed with the historic powers of its English and American prototypes to be exercised independently. The method of electing this head required the concurrent solution of the collateral problems pertaining to the term and compensation of the federal executive. Prolonged discussion of how to elect the executive and what term he should have occurred until the concluding stage of development was reached on September 12. Provision for his compensation rested on principles that were axiomatic.

The careful reader must have noticed the recurrence of opposition between large and small states in their views on methods of election, prompted by the wish of the former to give population the determining voice; whereas the latter urged that the states be made the controlling factors. The result was one of the most illogical compromises of the Constitution, a scheme which originally gave to the large states control of the nominating process, and to the small states predominance in the final election when no candidate received a majority in the electoral college. Fortunately for the nation, principles of party government, ignored by the makers, found expression in a growing party system which was strong enough by the middle of the nineteenth century to transform the unworkable plan of the founders into a method that approached, as closely as its complications permitted, the popular election

of our most important political officer. The source of this anachronistic compromise was probably the election of senators in Maryland and the electoral function of state legislatures.

How has this typical American executive met the needs of an imperial federal republic? First and foremost, it has given to the nation a *voice* instead of a chorus for the expression of its sentiments on important public occasions, and for the assertion of its fundamental rights. Without changing the basic law, that voice has become more and more powerful wherever it is heard. In the conduct of foreign affairs, it has promoted the observance of legal processes and agreements, protected the new nationalities of the western hemisphere, and led in the use of peaceful methods for the settlement of international differences. In domestic legislation it has developed beyond the message to Congress and the veto of bills authorized by the Constitution, to leadership in the drafting of the most important legislation, mobilization of legislative support, and appeals over the radio for popular approval. In administration it has been the most powerful promoter of the merit system, proclaiming that a public office is a public trust and not a party asset. In time of war it has put in charge of civil, military, and naval objectives the best ability the country contains, exercised totalitarian powers to meet military exigencies, and adjusted the nation to the restoration of peace with complete safety for the institutions and processes of a democracy. Finally, in the exercise of the pardoning power, it has mitigated the antagonisms of civil war and remedied the harshness of conviction for crime. The presidency is our only political office bound by its nature to serve the needs of the whole country in contradistinction to those of a section, or a state, or a congressional district. It will continue to draw to the White House, not at every election but with growing frequency, men like Abraham Lincoln and Theodore Roosevelt and Woodrow Wilson, who will supply the leadership adequate to the needs of their times.

**The Federal Judiciary.** In his introduction of the Virginia plan, Randolph stressed the defects of the existing Confederation. In its first constructive agreement, reached on the day following, the Convention, in Committee of the Whole, resolved that a national government be established, consisting of a supreme legislative, executive, and judiciary—an agreement which was never changed except in wording. Thus in broad outline was established early in the proceedings at Philadelphia the characteristic features of our present federal system. Logically, the completion of the great task of government building for a new nation required the creation of a supreme and subordinate courts to give the same independence and supremacy to the new government in the performance of its judicial functions as had been so successfully worked out for the other departments. Experiences under the Articles of Confederation contributed more perhaps to the drafting of adequate provisions for the establishment of a judiciary than to those pertaining to any other department.

The forerunners of our system of federal courts were the tentative arrangements provided by the Articles of Confederation for the settlement of controversies between the states, for the exercise of admiralty and maritime jurisdiction, and for the trial of prize cases. The sources of a federal supreme court go back to the power of the English Privy Council to negative colonial laws and to the establishment in nine of the thirteen first states of a supreme court for each. When the Convention assembled at Philadelphia the people of the country had been familiarized with the judicial power of declaring laws invalid, exercised by both English and American organs. They had been taught by English history and American practice dating back to the Act of Settlement of 1701 that judges should be independent and serve during good behavior. The wisdom of these practices was accepted by the makers without discussion. The method of securing these benefits gave rise to some differences of view concerning the compensation of judges, which ended in the equally wise provision that the salaries of the judiciary may not be decreased so as to affect

judges in office. From such a background came the provisions of the Constitution relative to the term and compensation of judges.

The appointment of judges provided for by the Constitution, while not ideal, is perhaps as satisfactory as human imperfections allow. It is certainly a vast improvement on early proposals in the Convention that judges be elected by the legislature, and later that they be appointed by the Senate. Under present conditions a student is apt to ask how judges with a social vision that will supplement their knowledge of law can be placed on the bench from time to time so as to give the principle of *salus populi* due weight in the function of the court as our constituent organ for adjusting the Constitution to the needs of the time, or, in other words, amending it. Constitution making under American principles of government must be controlled by the people. How can this *vox populi* reach the Supreme Court without impairing its judicial temperament or lessening its historic independence? The normal method is to have this happily termed social vision infiltrate the Supreme Court through appointments made by the President by and with the advice and consent of the Senate, a slow process that sometimes makes the doctrine of dissenting opinions more promotive of public welfare than the conservative survival of bygone judicial laws. Witness recent reversals of time-honored principles to which our government has adhered from its foundation. In our search for a solution of this problem, we should avoid the extreme of pronouncing a judge incompetent to function in these decisions of constitutional questions merely because he has passed his seventieth birthday. The services of constitutional jurists who have gone beyond that scriptural limit should make us cautious. Moreover, the policy of increasing the number of judges on the Supreme Bench to offset the caution and conservatism of members of advanced years savors too much of political packing to be a proper solution. It is a good rule to go slowly in efforts to change the Constitution.

The reader is apt to have only admiration for the remark-



able solution of the problem: What jurisdiction shall the federal courts be given? In substance and in phraseology, the answer given to this question by the makers is a masterpiece. Even the refusal of the Convention to make state courts tribunals of original jurisdiction in the new federal system deserves commendation. This is necessary to preserve the independence of political entities in our dual system of government, notwithstanding the use of such courts in the federal systems of Australia and Canada in our time. Each should have separate and independent institutions for the expression of its will concerning questions falling in the sphere of government belonging to it.

#### CONTEMPORARY EXPLICATIONS

The Federalist, Nos. 37-40; 44-46; 67-83

PART FIVE

OUTSTANDING FEATURES OF THE  
FEDERAL SYSTEM

INTRODUCTION

In Part Five, under the appropriate heading "Outstanding Features of the Federal System," scattered proceedings of the Convention are arranged consecutively to show how distinctive American political adaptations, and safeguards of person and property got into the supreme law of the land. Mr. Justice Story called government the science of adaptations. In no part of this book is his definition better illustrated than in proceedings in Chapters 18, 19, and 20, which close this volume. In Chapter 18, under the title "The Union and the States: Interstate Relations," the makers solve with remarkable perspicacity proper relations between the Union and the states on the one hand, among the several states on the other. No less contributory to the unique position of the American Constitution among the fundamental laws of states are its provisions safeguarding persons and property. In countries of Europe similar provisions are declarations of policy which may be disregarded by the legislature; in the United States they are mandates of the fundamental law made effective by judicial restraints. The source material in Chapter 19 shows how these safeguards were developed. The so-called federal Bill of Rights and the war amendments increased these safeguards greatly after the work of the Philadelphia Convention had ended.

In Chapter 20 the founders take sovereignty of the people out of the realm of theory to make it a reality in government; by

their terse enumeration of objectives they proclaim the principle of *salus populi*; by processes of modification, elimination and substitution, they establish the supremacy of the Constitution, obligate officials of all grades to obey its mandates, and thus fortify the truth that the only test of good government is conformity to law; by differentiating organs and their functions they provide for separation of powers, a principle still valuable in the upper ranges of government, but yielding to necessity in the development of ordinance-making and administrative adjudication.

CHAPTER 18  
THE UNION AND THE STATES:  
INTERSTATE RELATIONS

THE UNION AND THE STATES  
AMENDMENT OF THE CONSTITUTION

**Preliminaries in Committee of the Whole.** Resolved, that provision ought to be made for the amendment of the Articles of Union, whensoever it shall seem necessary; and that the assent of the national legislature ought not to be required thereto. Proposition in Virginia Plan. *May 29*

C. Pinckney: Doubted the propriety or necessity of it. *June 5*

Gerry: Favored it. The novelty and difficulty of the experiment requires periodical revision. The prospect of such a revision would also give intermediate stability to the government. Nothing had yet happened in the states where this provision existed to prove its impropriety.

The proposition was postponed for further consideration, the votes being: Yeas 7 (Massachusetts, Connecticut, New York, Pennsylvania, Delaware, Maryland, North Carolina); nays 3 (Virginia, South Carolina, Georgia).

The thirteenth resolution, for amending the national Constitution, hereafter, without consent of the national legislature, being considered, several members did not see the necessity of the resolution at all, nor the propriety of making the consent of the national legislature unnecessary. *June 11*

Mason: Urged the necessity of such a provision. The plan now to

be formed will certainly be defective, as the Confederation has been found on trial to be. Amendments, therefore, will be necessary; and it will be better to provide for them in an easy, regular and constitutional way than to trust to chance and violence. It would be improper to require the consent of the national legislature, because they may abuse their power, and refuse their assent on that very account. The opportunity for such an abuse may be the fault of the Constitution calling for amendment.

Randolph: Enforced these arguments.

The words, "without requiring the consent of the national legislature," were postponed. The other provision in the clause passed, *nem. con.*

- June 19*   **Fundamentals in Convention.** Resolved, that provision ought to be made for the amendment of the Articles of Union, whensoever it shall seem necessary. Seventeenth resolution, Committee of the Whole.
- July 23*   The seventeenth resolution, that provision ought to be made for future amendments of the Articles of the Union, was agreed to, *nem. con.*
- July 26*   **Agreement Referred to Committee of Detail.** Resolved, that provision ought to be made for the amendment of the Articles of Union, whensoever it shall seem necessary. Nineteenth resolution on fundamentals.
- Aug. 6*   **Details in Convention.** On the application of the legislatures of two-thirds of the states in the Union, for an amendment of this Constitution, the legislature of the United States shall call a convention for that purpose. Article XIX, Committee of Detail.
- Aug. 30*   G. Morris: Suggested that the legislature should be left at liberty to call a convention whenever they pleased.  
The article was agreed to, *nem. con.*
- Sept. 10*   Gerry: Moved to reconsider Article XIX, viz.: "On the application of the legislatures of two-thirds of the states in the Union, for an amendment of this Constitution, the legislature

of the United States shall call a convention for that purpose."

This Constitution, he said, is to be paramount to the state constitutions. It follows, hence, from this article, that two-thirds of the states may obtain a convention, a majority of which can bind the Union to innovations that may subvert the state constitutions altogether. He asked whether this was a situation proper to be run into.

Hamilton: Seconded the motion; but, he said, with a different view from Mr. Gerry. He did not object to the consequences stated by Mr. Gerry. There was no greater evil in subjecting the people of the United States to the major voice than the people of a particular state. It had been wished by many, and was much to have been desired, that an easier mode of introducing amendments had been provided by the Articles of the Confederation. It was equally desirable now that an easy mode should be established for supplying defects which will probably appear in the new system. The mode proposed was not adequate. The state legislatures will not apply for alterations; but with a view to increase their own powers. The national legislature will be the first to perceive, and will be most sensible to, the necessity of amendments; and ought also to be empowered, whenever two-thirds of each branch should concur, to call a convention. There could be no danger in giving this power, as the people would finally decide in the case.

Madison: Remarked on the vagueness of the terms, "call a convention for the purpose," as sufficient reason for reconsidering the article. How was a convention to be formed?—by what rule decide?—what the force of its acts?

On the motion of Gerry to reconsider: Yeas 9 (Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia); nays 1 (New Jersey); divided 1 (New Hampshire).

Sherman: Moved to add to the article: "or the legislature may propose amendments to the several states for their approbation; but no amendments shall be binding until consented to by the several states."

Gerry: Seconded the motion.

Wilson: Moved to insert, "two-thirds of," before the words "several states."

On which amendment to the motion of Sherman: Yeas 5 (New Hampshire, Pennsylvania, Delaware, Maryland, Virginia); nays 6 (Massachusetts, Connecticut, New Jersey, North Carolina, South Carolina, Georgia).

Wilson: Then moved to insert "three-fourths of" before "the several states"; which was agreed to, *nem. con.*

Madison: Moved to postpone the consideration of the amended proposition, in order to take up the following:

"The legislature of the United States, whenever two-thirds of both houses shall deem necessary, or on the application of two-thirds of the legislatures of the several states, shall propose amendments to this Constitution, which shall be valid to all intents and purposes as part thereof, when the same shall have been ratified by three-fourths, at least, of the legislatures of the several states, or by conventions in three-fourths thereof, as one or the other mode of ratification may be proposed by the legislature of the United States."

Hamilton: Seconded the motion.

Rutledge: Said he never could agree to give a power by which the articles relating to slaves might be altered by the states not interested in that property, and prejudiced against it. In order to obviate this objection, these words were added to the proposition: "provided that no amendments, which may be made prior to the year 1808 shall in any manner affect the fourth and fifth sections of the seventh article."

The postponement being agreed to—

On the question on the proposition of Madison and Hamilton, as amended: Yeas 9 (Massachusetts, Connecticut, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia); nays 1 (Delaware); divided 1 (New Hampshire).

*Sept. 12* **Conclusions in Convention.** The Congress, whenever two-thirds of both houses shall deem necessary, or on the application of two-thirds of the legislatures of the several states, shall propose amendments to this Constitution; which shall be valid to all

intents and purposes, as part thereof, when the same shall have been ratified by three-fourths at least of the legislatures of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress: Provided that no amendment which may be made prior to the year 1808 shall in any manner affect the ——— and ——— sections of the ——— article. Article V.  
Report of Committee on Style and Arrangement.

Article V. "The Congress, whenever two-thirds of both houses shall deem necessary, or on the application of two-thirds of the legislatures of the several states, shall propose amendments to this Constitution, which shall be valid to all intents and purposes as part thereof, when the same shall have been ratified by three-fourths at least of the legislatures of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress: provided that no amendment which may be made prior to the year 1808 shall in any manner affect the first and fourth clauses in the ninth section of Article I." *Sept. 15*

Sherman: Expressed his fears that three-fourths of the states might be brought to do things fatal to particular states; as abolishing them altogether, or depriving them of their equality in the Senate. He thought it reasonable that the proviso in favor of the states importing slaves should be extended so as to provide that no state should be affected in its internal police, or deprived of its equality in the Senate.

Mason: Thought the plan of amending the Constitution exceptionable and dangerous. As the proposing of amendments is in both the modes to depend, in the first immediately, and in the second ultimately, on Congress, no amendments of the proper kind would ever be obtained by the people if the government should become oppressive, as he verily believed would be the case.

G. Morris and Gerry: Moved to amend the article so as to require a convention on application of two-thirds of the states.

Madison: Did not see why Congress would not be as much bound to propose amendments applied for by two-thirds of the states



as to call a convention on the like application. He saw no objection, however, against providing for a convention for the purpose of amendments, except only that difficulties might arise as to the form, the quorum, etc., which in constitutional regulations ought to be as much as possible avoided.

The motion of G. Morris and Gerry was agreed to, *nem. con.*

Sherman: Moved to strike out of Article V, after "legislatures" the words "of three-fourths," and so after the word "conventions," leaving future conventions to act in this matter like the present Convention, according to circumstances.

On this motion: Yeas 3 (Massachusetts, Connecticut, New Jersey); nays 7 (Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia); divided 1 (New Hampshire).

Gerry: Moved to strike out the words, "or by conventions in three-fourths thereof."

On which motion: Yeas 1 (Connecticut); nays 10 (New Hampshire, Massachusetts, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia).

Sherman: Moved, according to his idea above expressed, to annex to the end of the article a further proviso "that no state shall, without its consent, be affected in its internal police, or deprived of its equal suffrage in the Senate."

Madison: Begin with these special provisos, and every state will insist on them, for their boundaries, exports, etc.

On the motion of Sherman: Yeas 3 (Connecticut, New Jersey, Delaware); nays 8 (New Hampshire, Massachusetts, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia).

Sherman: Then moved to strike out Article V altogether.

Brearley: Seconded the motion.

On the motion: Yeas 2 (Connecticut, New Jersey); nays 8 (New Hampshire, Massachusetts, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia); divided 1 (Delaware).

G. Morris: Moved to annex a further proviso, "that no state,

without its consent, shall be deprived of its equal suffrage in the Senate."

This motion, being dictated by the circulating murmurs of the small states, was agreed to without debate, no one opposing it, or, on the question, saying no.

The completed provision for amending the Constitution, finally approved on this date, was worded as follows: The Congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this Constitution; or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided that no amendment which may be made prior to the year 1808 shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the Senate. Article V. Sept. 17

#### REPUBLICAN GOVERNMENT AND INTERNAL SECURITY

**Preliminaries in Committee of the Whole.** Resolved, that a republican government, and the territory of each state, except in the instance of a voluntary junction of government and territory, ought to be guaranteed by the United States to each state. Proposition in Virginia Plan. May 29

The eleventh resolution *for guaranteeing to states republican government and territory, etc.*, being read: June 5

Paterson: Wished the point of representation could be decided before this clause should be considered, and moved to postpone it; which was not opposed, and agreed to, Connecticut and South Carolina only voting against it.

The eleventh resolution, for guaranteeing republican government and territory to each state, being considered, the words June 11

“or partition” were, on motion of Madison, added after the words “voluntary junction”: Yeas 7 (Massachusetts, New York, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia); nays 4 (Connecticut, New Jersey, Delaware, Maryland).

Read: Disliked the idea of guaranteeing territory. It abetted the idea of distinct states, which would be a perpetual source of discord. There can be no cure for this evil but in doing away states altogether and uniting them all into one great society. Alterations having been made in the resolution, making it read, “that a republican constitution, and its existing laws, ought to be guaranteed to each state by the United States,” the whole was agreed to, *nem. con.*

*June 19* **Fundamentals in Convention.** Resolved, that a republican constitution, and its existing laws, ought to be guaranteed to each state by the United States. Sixteenth resolution, Committee of the Whole.

*July 18* The sixteenth resolution being considered:

G. Morris: Thought the resolution very objectionable. He should be very unwilling that such laws as exist in Rhode Island should be guaranteed.

Wilson: The object is merely to secure the states against dangerous commotions, insurrections and rebellions.

Mason: If the general government should have no right to suppress rebellions against particular states, it will be in a bad situation indeed. As rebellions against itself originate in and against individual states, it must remain a passive spectator of its own subversion.

Randolph: The resolution has two objects—first, to secure a republican government; secondly, to suppress domestic commotions. He urged the necessity of both these provisions.

Madison: Moved to substitute “that the constitutional authority of the states shall be guaranteed to them respectively against domestic as well as foreign violence.”

McClurg: Seconded the motion.

Houstoun: Was afraid of perpetuating the existing constitutions

of the states. That of Georgia was a very bad one, and he hoped would be revised and amended. It may also be difficult for the general government to decide between contending parties, each of which claim the sanction of the Constitution.

L. Martin: Was for leaving the states to suppress rebellions themselves.

Gorham: Thought it strange that a rebellion should be known to exist in the empire and the general government should be restrained from interposing to subdue it. At this rate an enterprising citizen might erect the standard of monarchy in a particular state, might gather together partisans from all quarters, might extend his views from state to state, and threaten to establish a tyranny over the whole, and the general government be compelled to remain an inactive witness of its own destruction. With regard to different parties in a state, as long as they confine their disputes to words, they will be harmless to the general government and to each other. If they appeal to the sword, it will then be necessary for the general government, however difficult it may be, to decide on the merits of their contest, to interpose and put an end to it.

Carroll: Some such provision is essential. Every state ought to wish for it. It has been doubted whether it is a *casus foederis* at present; and no room ought to be left for such a doubt hereafter.

Randolph: Moved to add, as an amendment to the motion, "and that no state be at liberty to form any other than a republican government."

Madison: Seconded the motion.

Rutledge: Thought it unnecessary to insert any guarantee. No doubt could be entertained but that Congress had the authority, if they had the means, to cooperate with any state in subduing a rebellion. It was and would be involved in the nature of the thing.

Wilson: Moved, as a better expression of the idea, "that a republican form of government shall be guaranteed to each state; and that each state shall be protected against foreign and domestic violence."

This seeming to be well received, Madison and Randolph withdrew their propositions, and on the question for agreeing to Wilson's motion, it passed, *nem. con.*

*July 26* **Agreements Referred to Committee of Detail.** Resolved, that a republican form of government shall be guaranteed to each state; and that each state shall be protected against foreign and domestic violence. Eighteenth resolution on fundamentals.

*Aug. 6* **Details in Convention.** The legislature of the United States shall have the power . . . to subdue a rebellion in any state, on the application of its legislature. . . . Article VII, Section 1, clause 13, Committee of Detail.

The United States shall guarantee to each state a republican form of government; and shall protect each state against foreign invasions, and, on the application of its legislature, against domestic violence. Article XVIII, Committee of Detail.

*Aug. 17* The clause "to subdue a rebellion in any state, on the application of its legislature" was next considered.

C. Pinckney: Moved to strike out, "on the application of its legislature."

G. Morris: Seconds.

L. Martin: Opposed it as giving a dangerous and unnecessary power. The consent of the state ought to precede the introduction of any extraneous force whatever.

Mercer: Supported the opposition of Mr. Martin.

Ellsworth: Proposed to add, after "legislature," "or executive."

G. Morris: The executive may possibly be at the head of the rebellion. The general government should enforce obedience in all cases where it may be necessary.

Ellsworth: In many cases the general government ought not to be able to interpose unless called upon. He was willing to vary his motion so as to read "or without it, when the legislature cannot meet."

Gerry: Was against letting loose the myrmidons of the United States on a state, without its own consent. The states will be the

best judges in such cases. More blood would have been spilt in Massachusetts, in the late insurrection, if the general authority had intermeddled.

Langdon: Was for striking out, as moved by Mr. Pinckney. The apprehension of the national force will have a salutary effect in preventing insurrections.

Randolph: If the national legislature is to judge whether the state legislature can or cannot meet, that amendment would make the clause as objectionable as the motion of Mr. Pinckney.

G. Morris: We are acting a very strange part. We first form a strong man to protect us, and at the same time wish to tie his hands behind him. The legislature may surely be trusted with such a power to preserve the public tranquillity.

On the motion to add, "or without it (application) when the legislature cannot meet," it was agreed to: Yeas 5 (New Hampshire, Connecticut, Virginia, South Carolina, Georgia); nays 3 (Massachusetts, Delaware, Maryland); divided 2 (Pennsylvania, North Carolina).

Madison and Dickinson: Moved to insert, as explanatory, after "state," "against the government thereof." There might be a rebellion against the United States. The motion was agreed to, *nem. con.*

On the clause as amended: Yeas 4 (New Hampshire, Connecticut, Virginia, Georgia); nays 4 (Delaware, Maryland, North Carolina, South Carolina); absent 2 (Massachusetts, Pennsylvania). So it was lost.

Article XVIII, being taken up, the word "foreign" was struck out, *nem. con.*, as superfluous, being implied in the term "invasion." Aug. 30

Dickinson: Moved to strike out, "on the application of its legislature, against." He thought it of essential importance to the tranquillity of the United States that they should in all cases suppress domestic violence, which may proceed from the state legislature itself, or from disputes between the two branches where such exist.

Dayton: Mentioned the conduct of Rhode Island as showing the necessity of giving latitude to the power of the United States on this subject.

On the question: Yeas 3 (New Jersey, Pennsylvania, Delaware); nays 8 (New Hampshire, Massachusetts, Connecticut, Maryland, Virginia, North Carolina, South Carolina, Georgia).

On a question for striking out "domestic violence" and inserting "insurrections," it passed in the negative: Yeas 5 (New Jersey, Virginia, North Carolina, South Carolina, Georgia); nays 6 (New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland).

Dickinson: Moved to insert the words "or executive" after the words "application of its legislature." The occasion itself, he remarked, might hinder the legislature from meeting.

On this question: Yeas 8 (New Hampshire, Connecticut, New Jersey, Pennsylvania, Delaware, North Carolina, South Carolina, Georgia); nays 2 (Massachusetts, Virginia); divided 1 (Maryland).

L. Martin: Moved to subjoin to the last amendment the words, "in the recess of the legislature." On which question, Maryland only aye.

On the question on the last clause, as amended: Yeas 9 (New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia); nays 2 (Delaware, Maryland).

*Sept. 12* **Conclusions in Convention.** The United States shall guarantee to every state in this Union a republican form of government; and shall protect each of them against invasion; and, on application of the legislature or executive, against domestic violence. Article IV, Section 4. Report of Committee on Style and Arrangement.

*Sept. 15* After the word "executive" were inserted the words, "when the legislature cannot be convened."

*Sept. 17* The final draft of the completed Constitution included the following provision: The United States shall guarantee to every state in this Union, a republican form of government, and

shall protect each of them against invasion; and, on application of the legislature or the executive (when the legislature cannot be convened), against domestic violence. Article IV, Section 4.

#### COMPROMISES ON SLAVERY

**Details in Convention.** No tax or duty shall be laid by the legislature . . . on the migration or importation of such persons as the several states shall think proper to admit; nor shall such migration or importation be prohibited. Article VII, Section 4, Committee of Detail. *Aug. 6*

L. Martin: Proposed to vary Article VII, Section 4, so as to allow a prohibition or tax on the importation of slaves. In the first place, as five slaves are to be counted as three freemen, in the apportionment of representatives, such a clause would leave an encouragement to this traffic. In the second place, slaves weakened one part of the Union, which the other parts were bound to protect; the privilege of importing them was therefore unreasonable. And in the third place, it was inconsistent with the principles of the Revolution, and dishonorable to the American character to have such a feature in the Constitution. *Aug. 21*

Rutledge: Did not see how the importation of slaves could be encouraged by this section. He was not apprehensive of insurrections, and would readily exempt the other states from the obligation to protect the southern against them. Religion and humanity had nothing to do with this question. Interest alone is the governing principle with nations. The true question at present is whether the southern states shall or shall not be parties to the Union. If the northern states consult their interest, they will not oppose the increase of slaves, which will increase the commodities of which they will become the carriers.

Ellsworth: Was for leaving the clause as it stands. Let every state import what it pleases. The morality or wisdom of slavery are considerations belonging to the states themselves. What enriches a part enriches the whole, and the states are the best judges of their particular interest. The old Confederation had



not meddled with this point; and he did not see any greater necessity for bringing it within the policy of the new one.

C. Pinckney: South Carolina can never receive the plan if it prohibits the slave trade. In every proposed extension of the powers of Congress, that state has expressly and watchfully excepted that of meddling with the importation of negroes. If the states be all left at liberty on this subject, South Carolina may perhaps, by degrees, do of herself what is wished, as Virginia and Maryland already have done.

*Aug. 22* Sherman: Was for leaving the clause as it stands. He disapproved of the slave trade; yet as the states were now possessed of the right to import slaves, as the public good did not require it to be taken from them, and as it was expedient to have as few objections as possible to the proposed scheme of government, he thought it best to leave the matter as we find it. He observed that the abolition of slavery seemed to be going on in the United States, and that the good sense of the several states would probably by degrees complete it. He urged on the Convention the necessity of dispatching its business.

Mason: This infernal traffic originated in the avarice of British merchants. The British government constantly checked the attempts of Virginia to put a stop to it. The present question concerns not the importing states alone but the whole Union. The evil of having slaves was experienced during the late war. Had slaves been treated as they might have been by the enemy, they would have proved dangerous instruments in their hands. But their folly dealt by the slaves as it did by the Tories. He mentioned the dangerous insurrections of the slaves in Greece and Sicily; and the instructions given by Cromwell to the commissioners sent to Virginia, to arm the servants and slaves, in case other means of obtaining its submission should fail. Maryland and Virginia, he said, had already prohibited the importation of slaves expressly. North Carolina had done the same in substance. All this would be in vain, if South Carolina and Georgia be at liberty to import. The western people are already calling out for slaves for their new lands; and will fill that country with slaves, if they can be got through South

Carolina and Georgia. Slavery discourages arts and manufactures. The poor despise labor when performed by slaves. They prevent the emigration of whites, who really enrich and strengthen a country. They produce the most pernicious effect on manners. Every master of slaves is born a petty tyrant. They bring the judgment of Heaven on a country. As nations cannot be rewarded or punished in the next world, they must be in this. By an inevitable chain of causes and effects, Providence punishes national sins by national calamities. He lamented that some of our eastern brethren had, from a lust of gain, embarked in this nefarious traffic. As to the states being in possession of the right to import, this was the case with many other rights, now to be properly given up. He held it essential in every point of view that the general government should have power to prevent the increase of slavery.

Ellsworth: As he had never owned a slave, could not judge of the effects of slavery on character. He said, however, that if it was to be considered in a moral light, we ought to go further and free those already in the country. As slaves also multiply so fast in Virginia and Maryland, that it is cheaper to raise than import them, whilst in the sickly rice swamps foreign supplies are necessary, if we go no further than is urged, we shall be unjust towards South Carolina and Georgia. Let us not intermeddle. As population increases, poor laborers will be so plenty as to render slaves useless. Slavery, in time, will not be a speck in our country. Provision is already made in Connecticut for abolishing it. And the abolition has already taken place in Massachusetts. As to the danger of insurrections from foreign influence, that will become a motive to kind treatment of the slaves.

C. Pinckney: If slavery be wrong, it is justified by the example of all the world. He cited the case of Greece, Rome and other ancient states, the sanction given by France, England, Holland and other modern states. In all ages one half of mankind have been slaves. If the southern states were let alone, they will probably of themselves stop importations. He would himself, as a citizen of South Carolina, vote for it. An attempt to take

away the right, as proposed, will produce serious objections to the Constitution, which he wished to see adopted.

C. C. Pinckney: Declared it to be his firm opinion that if himself and all his colleagues were to sign the Constitution and use their personal influence, it would be of no avail towards obtaining the assent of their constituents. South Carolina and Georgia cannot do without slaves. As to Virginia, she will gain by stopping the importations. Her slaves will rise in value, and she has more than she wants. It would be unequal to require South Carolina and Georgia to confederate on such unequal terms. He said the royal assent, before the Revolution, had never been refused to South Carolina, as to Virginia. He contended that the importation of slaves would be for the interest of the whole Union. The more slaves, the more produce to employ the carrying trade; the more consumption also; and the more of this, the more revenue for the common treasury. He admitted it to be reasonable that slaves should be dutied like other imports, but should consider a rejection of the clause as an exclusion of South Carolina from the Union.

Baldwin: Had conceived national objects alone to be before the Convention; not such as, like the present, were of a local nature. Georgia was decided on this point. That state has always hitherto supposed a general government to be the pursuit of the central states, who wished to have a vortex for everything; that her distance would preclude her, from equal advantage; and that she could not prudently purchase it by yielding national powers. From this it might be understood, in what light she would view an attempt to abridge one of her favorite prerogatives. If left to herself, she may probably put a stop to the evil. As one ground for this conjecture, he took notice of the sect of ———; which he said was a respectable class of people, who carried their ethics beyond the mere *equality of men*, extending their humanity to the claims of the whole animal creation.

Wilson: Observed that if South Carolina and Georgia were themselves disposed to get rid of the importation of slaves in a short time, as had been suggested, they would never refuse to unite

because the importation might be prohibited. As the section now stands, all articles imported are to be taxed. Slaves alone are exempt. This is in fact a bounty on that article.

Gerry: Thought we had nothing to do with the conduct of the states as to slaves, but ought to be careful not to give any sanction to it.

Dickinson: Considered it as inadmissible, on every principle of honor and safety, that the importation of slaves should be authorized to the states by the Constitution. The true question was whether the national happiness would be promoted or impeded by the importation; and this question ought to be left to the national government, not to the states particularly interested. If England and France permit slavery, slaves are, at the same time, excluded from both those kingdoms. Greece and Rome were made unhappy by their slaves. He could not believe that the southern states would refuse to confederate on the account apprehended; especially as the power was not likely to be immediately exercised by the general government.

Williamson: Stated the law of North Carolina on the subject, to wit, that it did not directly prohibit the importation of slaves. It imposed a duty of five pounds on each slave imported from Africa; ten pounds on each from elsewhere; and fifty pounds on each from a state licensing manumission. He thought the southern states could not be members of the Union, if the clause should be rejected; and that it was wrong to force any thing down not absolutely necessary, and which any state must disagree to.

King: Thought the subject should be considered in a political light only. If two states will not agree to the Constitution, as stated on one side, he could affirm with equal belief, on the other, that great and equal opposition would be experienced from the other states. He remarked on the exemption of slaves from duty, whilst every other import was subjected to it, as an inequality that could not fail to strike the commercial sagacity of the northern and middle states.

Langdon: Was strenuous for giving the power to the general

government. He could not, with a good conscience, leave it with the states, who could then go on with the traffic, without being restrained by the opinions here given, that they will themselves cease to import slaves.

C. C. Pinckney: Thought himself bound to declare candidly that he did not think South Carolina would stop her importations of slaves in any short time; but only stop them occasionally as she now does. He moved to commit the clause that slaves might be made liable to an equal tax with other imports; which he thought right, and which would remove one difficulty that had been started.

Rutledge: If the Convention thinks that North Carolina, South Carolina, and Georgia will ever agree to the plan, unless their right to import slaves be untouched, the expectation is vain. The people of those states will never be such fools as to give up so important an interest. He was strenuous against striking out the section, and seconded the motion of General Pinckney for a commitment.

G. Morris: Wished the whole subject to be committed, including the clauses relating to taxes on exports and to a navigation act. These things may form a bargain among the northern and southern states.

Butler: Declared that he never would agree to the power taxing exports.

Sherman: Said it was better to let the southern states import slaves than to part with them, if they made that a *sine qua non*. He was opposed to a tax on slaves imported, as making the matter worse, because it implied they were *property*. He acknowledged that if the power of prohibiting the importation should be given to the general government, that it would be exercised. He thought it would be its duty to exercise the power.

Read: Was for the commitment, provided the clause concerning taxes on exports should also be committed.

Sherman: Observed that that clause had been agreed to, and therefore could not be committed.

Randolph: Was for committing, in order that some middle

ground might, if possible, be found. He could never agree to the clause as it stands. He would sooner risk the Constitution. He dwelt on the dilemma to which the Convention was exposed. By agreeing to the clause, it would revolt the Quakers, the Methodists, and many others in states having no slaves. On the other hand, two states might be lost to the Union. Let us then, he said, try the chance of a commitment.

On the question for committing the remaining part of Sections 4 and 5 of Article VII: Yeas 7 (Connecticut, New Jersey, Maryland, Virginia, North Carolina, South Carolina, Georgia); nays 3 (New Hampshire, Pennsylvania, Delaware); absent 1 (Massachusetts).

Livingston, from the committee of eleven to whom were referred the two remaining clauses of the fourth section of the seventh article, delivered in the following report: "Strike out so much of the fourth section as was referred to the committee and insert, 'The migration or importation of such persons as the several states, now existing, shall think proper to admit, shall not be prohibited by the legislature prior to the year 1800; but a tax or duty may be imposed on such migrations or importation, at a rate not exceeding the average of the duties laid on imports.' "

C. C. Pinckney: Moved to strike out the words, "the year eighteen hundred" as the year limiting the importation of slaves; and to insert the words, "the year eighteen hundred and eight."

Gorham: Seconded the motion.

Madison: Twenty years will produce all the mischief that can be apprehended from the liberty to import slaves. So long a term will be more dishonorable to the American character than to say nothing about it in the Constitution.

On the motion, which passed in the affirmative: Yeas 7 (New Hampshire, Massachusetts, Connecticut, Maryland, North Carolina, South Carolina, Georgia); nays 4 (New Jersey, Pennsylvania, Delaware, Virginia).

G. Morris: Was for making the clause read at once, "the im-

portation of slaves into North Carolina, South Carolina, and Georgia, shall not be prohibited, etc.” This, he said, would be most fair, and would avoid the ambiguity by which, under the power with regard to naturalization, the liberty reserved to the states might be defeated. He wished it to be known, also, that this part of the Constitution was a compliance with those states. If the change of language, however, should be objected to, by the members from those states, he should not urge it.

Mason: Was not against using the term “slaves” but against naming North Carolina, South Carolina, and Georgia, lest it should give offense to the people of those states.

Sherman: Liked a description better than the terms proposed, which had been declined by the old Congress and were not pleasing to some people.

Clymer: Concurred with Mr. Sherman.

Williamson: Said that both in opinion and practice, he was against slavery; but thought it more in favor of humanity, from a view of all circumstances, to let in South Carolina, and Georgia, on those terms than to exclude them from the Union.

G. Morris: Withdrew his motion.

Dickinson: Wished the clause to be confined to the states which had not themselves prohibited the importation of slaves; and for that purpose moved to amend the clause, so as to read: “The importation of slaves into such of the states as shall permit the same, shall not be prohibited by the legislature of the United States, until the year 1808”; which was disagreed to, *nem. con.*

The first part of the report was then agreed to, amended as follows: “The migration or importation of such persons as the several states now existing shall think proper to admit shall not be prohibited by the legislature prior to the year 1808”: Yeas 7 (New Hampshire, Massachusetts, Connecticut, Maryland, North Carolina, South Carolina, Georgia); nays 4 (New Jersey, Pennsylvania, Delaware, Virginia).

Baldwin: In order to restrain and more explicitly define “the average duty,” moved to strike out of the second part the words

“average of the duties laid on imports” and insert “common impost on articles not enumerated”; which was agreed to, *nem. con.*

Sherman: Was against this second part, as acknowledging men to be property, by taxing them as such under the character of slaves.

King and Langdon: Considered this as the price of the first part.

C. C. Pinckney: Admitted that it was so.

Mason: Not to tax will be equivalent to a bounty on the importation of slaves.

Gorham: Thought that Mr. Sherman should consider the duty not as implying that slaves are property, but as a discouragement to the importation of them.

G. Morris: Remarked that, as the clause now stands, it implies that the legislature may tax freemen imported.

Sherman: In answer to Mr. Gorham, observed that the smallness of the duty shows revenue to be the object, not the discouragement of the importation.

Madison: Thought it wrong to admit in the Constitution the idea that there could be property in men. The reason of duties did not hold, as slaves are not, like merchandise, consumed, etc.

Mason: In answer to Mr. G. Morris. The provision, as it stands, was necessary for the case of convicts, in order to prevent the introduction of them.

It was finally agreed, *nem. con.*, to make the clause read: “but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person”; and then the second part, as amended, was agreed to.

**Conclusions in Convention.** The migration or importation of such persons as the several states now existing shall think proper to admit shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight; but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person. Article I, Section 9, paragraph 1. Report of Committee on Style and Arrangement. Sept. 12



- Sept. 17* This recommendation of the committee was included in the completed Constitution.

MISCELLANEOUS PROHIBITIONS ON THE UNION

- Aug. 6* **Details in Convention.** No tax or duty shall be laid by the legislature on articles exported from any state. . . . Article VII, Section 4, Committee of Detail.

No navigation act shall be passed without the assent of two-thirds of the members present in each house. Article VII, Section 6, Committee of Detail.

The United States shall not grant any title of nobility. Article VII, Section 7, Committee of Detail.

- Aug. 21* **Langdon:** By this section (Article VII, Section 4) the states are left at liberty to tax exports. New Hampshire, therefore, with other non-exporting states, will be subject to be taxed by the states exporting its produce. This could not be admitted. It seems to be feared that the northern states will oppress the trade of the southern. This may be guarded against by requiring the concurrence of two-thirds, or three-fourths of the legislature, in such cases.

**Ellsworth:** It is best as it stands. The power of regulating trade between the states will protect them against each other. Should this not be the case, the attempts of one to tax the produce of another, passing through its hands, will force a direct exportation and defeat themselves. There are solid reasons against Congress taxing exports. First, it will discourage industry, as taxes on imports discourage luxury. Secondly, the produce of different states is such as to prevent uniformity in such taxes. There are indeed but a few articles that could be taxed at all; as tobacco, rice, and indigo; and a tax on these alone would be partial and unjust. Thirdly, the taxing of exports would engender incurable jealousies.

**Williamson:** Though North Carolina has been taxed by Virginia by a duty on twelve thousand hogsheads of her tobacco through Virginia, yet he would never agree to this power. Should it take place, it would destroy the last hope of the adoption of the plan.

G. Morris: These local considerations ought not to impede the general interest. There is great weight in the argument that the exporting states will tax the produce of their uncommercial neighbors. The power of regulating the trade between Pennsylvania and New Jersey will never prevent the former from taxing the latter. Nor will such a tax force a direct exportation from New Jersey. The advantages possessed by a large trading city outweigh the disadvantage of a moderate duty; and will retain the trade in that channel. If no tax can be laid on exports, an embargo cannot be laid, though in time of war such a measure may be of critical importance. Tobacco, lumber and livestock are three objects belonging to different states of which great advantage might be made by a power to tax exports. To these may be added ginseng and masts for ships, by which a tax might be thrown on other nations. The idea of supplying the West Indies with lumber from Nova Scotia is one of the many follies of Lord Sheffield's pamphlet. The state of the country, also, will change, and render duties on exports, as skins, beaver and other peculiar raw materials, politic in the view of encouraging American manufactures.

Butler: Was strenuously opposed to a power over exports, as unjust and alarming to the staple states.

Langdon: Suggested a prohibition on the states from taxing the produce of other states exported from their harbors.

Dickinson: The power of taxing exports may be inconvenient at present; but it must be of dangerous consequence to prohibit it with respect to all articles, and for ever. He thought it would be better to except particular articles from the power.

Sherman: It is best to prohibit the national legislature in all cases. The states will never give up all power over trade. An enumeration of particular articles would be difficult, invidious, and improper.

Madison: As we ought to be governed by national and permanent views, it is a sufficient argument for giving the power over exports, that a tax, though it may not be expedient at present, may be so hereafter. A proper regulation of exports may, and probably will, be necessary hereafter and for the same pur-

poses as the regulation of imports, viz., for revenue, domestic manufactures, and procuring equitable regulations from other nations. An embargo may be of absolute necessity, and can be alone effectuated by the general authority. The regulation of trade between state and state cannot effect more than indirectly to hinder a state from taxing its own exports, by authorizing its citizens to carry their commodities freely into a neighboring state, which might decline taxing exports, in order to draw into its channel the trade of its neighbors. As to the fear of disproportionate burdens on the non-exporting states, it might be remarked that it was agreed, on all hands, that the revenue would principally be drawn from trade, and as only a given revenue would be needed, it was not material whether all should be drawn wholly from imports, or half from those and half from exports. The imports and exports must be pretty nearly equal in every state, and, relatively, the same among the different states.

Ellsworth: Did not conceive an embargo by the Congress interdicted by this section.

McHenry: Conceived that power to be included in the power of war.

Wilson: Pennsylvania exports the produce of Maryland, New Jersey, Delaware, and will by and by, when the river Delaware is opened, export for New York. In favoring the general power over exports, therefore, he opposed the particular interest of his state. He remarked that the power had been attacked by reasoning which could only have held good, in case the general government had been *compelled*, instead of *authorized*, to lay duties on exports. To deny this power is to take from the common government half the regulation of trade. It was his opinion that a power over exports might be more effectual than that over imports, in obtaining beneficial treaties of commerce.

Gerry: Was strenuously opposed to the power over exports. It might be made use of to compel the states to comply with the will of the general government, and to grant it any new powers which might be demanded. We have given it more power already than we know how will be exercised. It will enable the

general government to oppress the states, as much as Ireland is oppressed by Great Britain.

Fitzsimons: Would be against a tax on exports to be laid immediately; but was for giving a power of laying the tax when a proper time may call for it. This would certainly be the case when America should become a manufacturing country. He illustrated his argument by the duties in Great Britain on wool, etc.

Mason: If he were for reducing the states to mere corporations, as seemed to be the tendency of some arguments, he should be for subjecting their exports as well as imports to a power of general taxation. He went on a principle often advanced and in which he concurred; that a majority, when interested, will oppress the minority. This maxim had been verified by our own legislature (of Virginia). If we compare the states in this point of view, the eight northern states have an interest different from the five southern states; and have, in one branch of the legislature, thirty-six votes against twenty-nine, and in the other in the proportion of eight against five. The southern states had therefore ground for their suspicions. The case of exports was not the same with that of imports. The latter were the same throughout the states; the former very different. As to tobacco, other nations do raise it, and are capable of raising it, as well as Virginia, etc. The impolicy of taxing that article had been demonstrated by the experiment of Virginia.

Clymer: Remarked that every state might reason with regard to its particular productions in the same manner as the southern states. The middle states may apprehend an oppression of their wheat, flour, provisions, etc.; and with more reason, as these articles were exposed to a competition in foreign markets not incident to tobacco, rice, etc. They may apprehend also combinations against them, between the eastern and southern states as much as the latter can apprehend them between the eastern and middle. He moved, as a qualification of the power of taxing exports, that it should be restrained to regulations of trade, by inserting, after the word "duty," Article VII, Section 4, the words, "for the purpose of revenue."

On the question on Clymer's motion: Yeas 3 (New Jersey, Pennsylvania, Delaware); nays 8 (New Hampshire, Massachusetts, Connecticut, Maryland, Virginia, North Carolina, South Carolina, Georgia).

Madison: In order to require two-thirds of each house to tax exports, as a lesser evil than a total prohibition, moved to insert the words, "unless by consent of two-thirds of the legislature."

Wilson: Seconds.

On this question, it passed in the negative: Yeas 5 (New Hampshire, Massachusetts, New Jersey, Pennsylvania, Delaware); nays 6 (Connecticut, Maryland, Virginia, North Carolina, South Carolina, Georgia).

On the question on Article VII, Section 4, as far as to "no tax shall be laid on exports," it passed in the affirmative: Yeas 7 (Massachusetts, Connecticut, Maryland, Virginia, North Carolina, South Carolina, Georgia); nays 4 (New Hampshire, New Jersey, Pennsylvania, Delaware).

Aug. 22 C. Pinckney and Langdon: Moved to commit Section 6, as to a navigation act by two-thirds of each house.

Gorham: Did not see the propriety of it. Is it meant to require a greater proportion of votes? He desired it to be remembered that the eastern states had no motive to union but a commercial one. They were able to protect themselves. They were not afraid of external danger, and did not need the aid of the southern states.

Wilson: Wished for a commitment, in order to reduce the proportion of votes required.

Ellsworth: Was for taking the plan as it is. This widening of opinions had a threatening aspect. If we do not agree on this middle and moderate ground, he was afraid we should lose two states, with such others as may be disposed to stand aloof; should fly into a variety of shapes and directions, and most probably into several confederations—and not without bloodshed.

On the question for committing Section 6, as to a navigation act, to a member from each state: Yeas 9 (New Hampshire, Massachusetts, Pennsylvania, Delaware, Maryland, Virginia, North

Carolina, South Carolina, Georgia); nays 2 (Connecticut, New Jersey).

The committee appointed were: Langdon, King, Johnson, Livingston, Clymer, Dickinson, L. Martin, Madison, Williamson, C. C. Pinckney, and Baldwin.

On the question to agree to Article VII, Section 7, as reported, it passed, *nem. con.* Aug. 23

Livingston, from the committee of eleven, to whom was referred the sixth section, of the seventh article, delivered in the following report: "The sixth section to be stricken out." Aug. 24

Article VII, Section 6, in the report was postponed. Aug. 25

Carroll and L. Martin: Expressed their apprehensions, and the probable apprehensions of their constituents, that under the power of regulating trade the general legislature might favor the ports of particular states, by requiring vessels destined to or from other states to enter and clear thereat; as vessels belonging or bound to Baltimore, to enter and clear at Norfolk, etc. They moved the following proposition:

"The legislature of the United States shall not oblige vessels belonging to citizens thereof, or to foreigners, to enter or pay duties or imposts in any other state than in that to which they may be bound, or to clear out in any other than the state in which their cargoes may be laden on board; nor shall any privilege or immunity be granted to any vessel on entering or clearing out, or paying duties or imposts in one state in preference to another."

Gorham: Thought such a precaution unnecessary; and that the revenue might be defeated, if vessels could run up long rivers, through the jurisdiction of different states, without being required to enter, with the opportunity of landing and selling their cargoes by the way.

McHenry and C. C. Pinckney made the following propositions: "Should it be judged expedient by the legislature of the United States that one or more ports for collecting duties or imposts, other than those ports of entrance and clearance already established by the respective states, should be estab-

lished, the legislature of the United States shall signify the same to the executives of the respective states, ascertaining the number of such ports judged necessary, to be laid by the said executives before the legislatures of the states at their next session; and the legislature of the United States shall not have the power of fixing or establishing the particular ports for collecting duties or imposts in any state, except the legislature of such state shall neglect to fix and establish the same during their first session to be held after such notification by the legislature of the United States to the executive of such state.

"All duties, imposts and excise, prohibitions or restraints, laid or made by the legislature of the United States, shall be uniform and equal throughout the United States."

These several propositions were referred, *nem. con.*, to a committee composed of a member from each state. The committee, appointed by ballot, were: Langdon, Gorham, Sherman, Dayton, Fitzsimons, Read, Carroll, Mason, Williamson, Butler, Few.

[The Committee recommendation relative to uniformity of taxation is considered also in Chapter 19 on "Safeguards."]

Aug. 28 Sherman: From the committee to whom were referred several propositions on the twenty-fifth instant, made the following report; which was ordered to lie on the table: "That there be inserted, after the fourth clause of the seventh section: 'Nor shall any regulation of commerce or revenue give preference to the ports of one state over those of another, or oblige vessels bound to or from any state to enter, clear or pay duties in another; and all tonnage, duties, imposts, and excises laid by the legislature, shall be uniform throughout the United States.'"

Aug. 31 On the question to agree to the following clause, to be inserted after Article VII, Section 4, "nor shall any regulation of commerce or revenue give preference to the ports of one state over those of another": agreed to, *nem. con.*

On the clause, "or oblige vessels bound to or from any state to enter, clear, or pay duties, in another":

Madison: Thought the restriction would be inconvenient; as in the river Delaware, if a vessel cannot be required to make entry below the jurisdiction of Pennsylvania.

Fitzsimons: Admitted that it might be inconvenient, but thought it would be a greater inconvenience to require vessels bound to Philadelphia to enter below the jurisdiction of the state.

Gorham and Langdon: Contended that the government would be so fettered by this clause as to defeat the good purpose of the plan. They mentioned the situation of the trade of Massachusetts and New Hampshire, the case of Sandy Hook, which is in the state of New Jersey, but where precautions against smuggling into New York ought to be established by the general government.

McHenry: Said the clause would not screen a vessel from being obliged to take an officer on board, as a security for due entry, etc.

Carroll: Was anxious that the clause should be agreed to. He assured the House that this was a tender point in Maryland.

Jenifer: Urged the necessity of the clause in the same point of view.

On the question for agreeing to it: Yeas 8 (Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Georgia); nays 2 (New Hampshire, South Carolina).

**Conclusions in Convention.** No tax or duty shall be laid on articles exported from any state. Article I, Section 9, clause 5. Report of Committee on Style and Arrangement. *Sept. 12*

No title of nobility shall be granted by the United States. Article I, Section 9, clause 7, first sentence. Report of Committee on Style and Arrangement.

At the end of the clause, "no tax or duty shall be laid on articles exported from any state," was added the following amendment, conformably to a vote on August 31, viz., "no preference shall be given, by any regulation of commerce or revenue, to *Sept. 14*



the ports of one state over those of another: nor shall vessels bound to or from one state be obliged to enter, clear, or pay duties, in another."

- Sept. 17* The recommendations of the Committee on Style and Arrangement were included in the completed Constitution. Also included was the following, as Article I, Section 9, paragraph 5, second sentence: No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another: nor shall vessels bound to or from one state be obliged to enter, clear, or pay duties in another.

#### MISCELLANEOUS PROHIBITIONS ON STATES

- Aug. 6* **Details in Convention.** No state shall coin money; nor grant letters of marque and reprisal; nor enter into any treaty, alliance or confederation; nor grant any title of nobility. Article XII, Committee of Detail.

No state, without the consent of the legislature of the United States, shall emit bills of credit, or make anything but specie a tender in payment of debts; nor lay imposts or duties on imports; nor keep troops or ships of war in time of peace; nor enter into any agreement or compact with another state, or with any foreign power; nor engage in any war, unless it shall be actually invaded by enemies, or the danger of invasion be so imminent as not to admit of a delay until the legislature of the United States can be consulted. Article XIII, Committee of Detail.

- Aug. 28* Article XII being taken up:  
 Wilson and Sherman: Moved to insert, after the words "coin money," the words, "nor emit bills of credit, nor make any thing but gold and silver coin a tender in payment of debts"; making these prohibitions absolute, instead of making the measures allowable, as in the thirteenth article, *with the consent of the legislature of the United States*.  
 Gorham: Thought the purpose would be as well secured by the provision of Article XIII, which makes the consent of the gen-

eral legislature necessary; and that in that mode no opposition would be excited, whereas an absolute prohibition of paper money would rouse the most desperate opposition from its partisans.

Sherman: Thought this a favorable crisis for crushing paper money. If the consent of the legislature could authorize emissions of it, the friends of paper money would make every exertion to get into the legislature in order to license it.

The question being divided: On the first part, "nor emit bills of credit": Yeas 8 (New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, North Carolina, South Carolina, Georgia); nays 1 (Virginia); divided 1 (Maryland).

The remaining part of Wilson's and Sherman's motion was agreed to, *nem. con.*

King: Moved to add, in the words used in the ordinance of Congress establishing new states, a prohibition on the states to interfere in private contracts.

G. Morris: This would be going too far. There are a thousand laws relating to bringing actions, limitations of actions, etc., which affect contracts. The judicial power of the United States will be a protection in cases within their jurisdiction; and within the state itself a majority must rule, whatever may be the mischief done among themselves.

Sherman: Why then prohibit bills of credit?

Wilson: Was in favor of Mr. King's motion.

Madison: Admitted that inconveniences might arise from such a prohibition, but thought on the whole it would be overbalanced by the utility of it. He conceived, however, that a negative on the state laws could alone secure the effect. Evasions might and would be devised by the ingenuity of the legislatures.

Mason: This is carrying the restraint too far. Cases will happen that cannot be foreseen, where some kind of interference will be proper and essential. He mentioned the case of limiting the period for bringing actions on open account—that of bonds after a certain lapse of time—asking whether it was proper to

tie the hands of the states from making provision in such cases. Wilson: The answer to these objections is that retrospective *interferences* only are to be prohibited.

Madison: Is not that already done by the prohibition of ex post facto laws, which will oblige the judges to declare interferences null and void.

Rutledge: Moved, instead of Mr. King's motion, to insert, "nor pass bills of attainder, nor retrospective laws."

On which motion: Yeas 7 (New Hampshire, New Jersey, Pennsylvania, Delaware, North Carolina, South Carolina, Georgia); nays 3 (Connecticut, Maryland, Virginia).

Madison: Moved to insert, after the word "reprisal" (Article XII), the words, "nor lay embargoes." He urged that such acts by the states would be unnecessary, impolitic, and unjust.

Sherman: Thought the states ought to retain this power, in order to prevent suffering and injury to their poor.

Mason: Thought the amendment would be not only improper but dangerous, as the general legislature would not sit constantly, and therefore could not interpose at the necessary moments. He enforced his objection by appealing to the necessity of sudden embargoes, during the war, to prevent exports, particularly in the case of a blockade.

G. Morris: Considered the provision as unnecessary; the power of regulating trade between state and state, already vested in the general legislature, being sufficient.

On the question: Yeas 3 (Massachusetts, Delaware, South Carolina); nays 8 (New Hampshire, Connecticut, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, Georgia).

Madison: Moved that the words, "nor lay imposts or duties on imports," be transferred from Article XIII, where the consent of the general legislature may license the act, into Article XII, which will make the prohibition on the states absolute. He observed that as the states interested in this power, by which they could tax the imports of their neighbors passing through their markets, were a majority, they could give the consent of the legislature to the injury of New Jersey, North Carolina, etc.

Williamson: Seconded the motion.

Sherman: Thought the power might safely be left to the legislature of the United States.

Mason: Observed that particular states might wish to encourage, by impost duties, certain manufactures, for which they enjoyed natural advantages, as Virginia, the manufacture of hemp, etc.

Madison: The encouragement of manufactures in that mode requires duties, not only on imports directly from foreign countries, but from the other states in the Union, which would revive all the mischiefs experienced from the want of a general government over commerce.

On the question: Yeas 4 (New Hampshire, New Jersey, Delaware, North Carolina); nays 7 (Massachusetts, Connecticut, Pennsylvania, Maryland, Virginia, South Carolina, Georgia).

Article XII, as amended, was then agreed to, *nem. con.*

Article XIII was then taken up.

King: Moved to insert, after the word "imports," the words "or exports," so as to prohibit the states from taxing either; and on this question, it passed in the affirmative: Yeas 6 (New Hampshire, Massachusetts, New Jersey, Pennsylvania, Delaware, North Carolina); nays 5 (Connecticut, Maryland, Virginia, South Carolina, Georgia).

Sherman: Moved to add, after the word "exports," the words "nor with such consent, but for the use of the United States"; so as to carry the proceeds of all state duties on imports or exports into the common treasury.

Madison: Liked the motion, as preventing all state imposts; but lamented the complexity we were giving to the commercial system.

G. Morris: Thought the regulation necessary, to prevent the Atlantic states from endeavoring to tax the western states, and promote their interest by opposing the navigation of the Mississippi, which would drive the western people into the arms of Great Britain.

Clymer: Thought the encouragement of the western country was suicide on the part of the old states. If the states have such

different interests that they cannot be left to regulate their own manufactures, without encountering the interests of other states, it is a proof that they are not fit to compose one nation.

King: Was afraid that the regulation moved by Mr. Sherman would too much interfere with the policy of states respecting their manufactures, which may be necessary. Revenue, he reminded the House, was the object of the general legislature.

On Sherman's motion: Yeas 9 (New Hampshire, Connecticut, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia); nays 2 (Massachusetts, Maryland).

Article XIII was then agreed to, as amended.

Aug. 29 Dickinson: Mentioned to the house that on examining Blackstone's *Commentaries*, he found that the term "ex post facto" related to criminal cases only; that they would not consequently restrain the states from retrospective laws in civil cases; and that some further provision for this purpose would be requisite.

Sept. 12 **Conclusions in Convention.** No state shall coin money, or emit bills of credit, or make any thing but gold or silver coin a tender in payment of debts, or pass . . . laws altering or impairing the obligation of contracts; or grant letters of marque and reprisal, or enter into any treaty, alliance or confederation, or grant any title of nobility. Article I, Section 10, paragraph 1. Report of Committee on Style and Arrangement.

No state shall, without the consent of Congress, lay imposts or duties on imports or exports; or with such consent, but to the use of the Treasury of the United States; or keep troops or ships of war in time of peace; or enter into any agreement or compact with another state, or with any foreign power; or engage in any war, unless it shall be actually invaded by enemies, or the danger of invasion be so imminent as not to admit of delay until the Congress can be consulted. Article I, Section 10, paragraph 2. Report of Committee on Style and Arrangement. The clause relating to exports being reconsidered, at the in-

stance of Col. Mason—who urged that the restrictions on the states would prevent the incidental duties necessary for the inspection and safekeeping of their produce, and be ruinous to the staple states, as he called the five southern states—he moved as follows: “provided nothing herein contained shall be construed to restrain any state from laying duties upon exports for the sole purpose of defraying the charges of inspecting, packing, storing and indemnifying the losses in keeping the commodities in the care of public officers, before exportation.” In answer to a remark which he anticipated, to wit, that the states could provide for these expenses, by a tax in some other way, he stated the inconvenience of requiring the planters to pay a tax before the actual delivery for exportation.

Madison: Seconded the motion. It would at least be harmless; and might have the good effect of restraining the states to bona fide duties for the purpose, as well as of authorizing explicitly such duties; though perhaps the best guard against an abuse of the power of the states on this subject was the right in the general government to regulate trade between state and state.

G. Morris: Saw no objection to the motion. He did not consider the dollar per hogshead laid on tobacco in Virginia as a duty on exportation, as no drawback would be allowed on tobacco taken out of the warehouse for internal consumption.

Dayton: Was afraid the proviso would enable Pennsylvania to tax New Jersey under the idea of inspection duties of which Pennsylvania would judge.

Gorham and Langdon: Thought there would be no security, if the proviso should be agreed to, for the states exporting through other states, against these oppressions of the latter. How was redress to be obtained, in case duties should be laid beyond the purpose expressed?

Madison: There will be the same security as in other cases. The jurisdiction of the Supreme Court must be the source of redress. So far only had provision been made by the plan against injurious acts of the states. His own opinion was that this was

insufficient. A negative on the state laws alone could meet all the shapes which these could assume. But this had been overruled.

Fitzsimons: Incidental duties on tobacco and flour never have been and never can be considered as duties on exports.

Dickinson: Nothing will save the states in the situation of New Hampshire, New Jersey, Delaware, etc., from being oppressed by their neighbors, but requiring the assent of Congress to inspection duties. He moved that this assent should accordingly be required.

Butler: Seconded the motion.

*Sept. 13* Mason: Renewed his proposition of yesterday on the subject of inspection laws, with an additional clause giving to Congress a control over them in case of abuse—as follows: “Provided that no state shall be restrained from imposing the usual duties on produce exported from such state, for the sole purpose of defraying the charges of inspecting, packing, storing, and indemnifying the losses on such produce, while in the custody of public officers; but all such regulations shall, in case of abuse, be subject to the revision and control of Congress.”

There was no debate, and on the question: Yeas 7 (New Hampshire, Massachusetts, Connecticut, Maryland, Virginia, North Carolina, Georgia); nays 3 (Pennsylvania, Delaware, South Carolina).

*Sept. 14* The first clause of Article I, Section 10, was altered so as to read, “no state shall enter into any treaty, alliance or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.”

Gerry: Entered into observations inculcating the importance of public faith, and the propriety of the restraint put on the states from impairing the obligation of contracts; alleging that Congress ought to be laid under the like prohibitions. He made a motion to that effect. He was not seconded.

Article I, Section 10 (the second paragraph), "No state shall, without the consent of Congress, lay imposts or duties on imports or exports; nor with such consent, but to the use of the treasury of the United States." *Sept. 15*

In consequence of the proviso moved by Colonel Mason, and agreed to on September 13, this part of the section was laid aside in favor of the following substitute, viz.: "No state shall, without the consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any state on imports or exports shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress."

On the motion to strike out the last part, "and all such laws shall be subject to the revision and control of the Congress," it passed in the negative: Yeas 3 (Virginia, North Carolina, Georgia); nays 7 (New Hampshire, Massachusetts, Connecticut, New Jersey, Delaware, Maryland, South Carolina); divided 1 (Pennsylvania).

The substitute was then agreed to, Virginia alone being in the negative.

McHenry and Carroll: Moved, that "no state shall be restrained from laying duties of tonnage for the purpose of clearing harbors and erecting lighthouses."

Mason: In support of this, explained and urged the situation of the Chesapeake, which peculiarly required expenses of this sort.

G. Morris: The states are not restrained from laying tonnage, as the Constitution now stands. The exception proposed will imply the contrary, and will put the states in a worse condition than the gentleman (Col. Mason) wishes.

Madison: Whether the states are now restrained from laying tonnage duties depends on the extent of the power "to regulate commerce." These terms are vague, but seem to exclude this power of the states. They may certainly be restrained by treaty. He observed that there were other objects for tonnage



duties, as the support of seamen, etc. He was more and more convinced that the regulation of commerce was in its nature indivisible, and ought to be wholly under one authority.

Sherman: The power of the United States to regulate trade being supreme can control interferences of the state regulations, when such interferences happen; so that there is no danger to be apprehended from a concurrent jurisdiction.

Langdon: Insisted that the regulation of tonnage was an essential part of the regulation of trade, and that the states ought to have nothing to do with it.

On motion, "that no state shall lay any duty on tonnage without the consent of Congress": Yeas 6 (New Hampshire, Massachusetts, New Jersey, Delaware, Maryland, South Carolina); nays 4 (Pennsylvania, Virginia, North Carolina, Georgia); divided 1 (Connecticut).

The remainder of the paragraph was then remolded and passed, as follows, viz.: "No state shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay."

*Sept. 17* Prohibitions on states in the completed Constitution are worded as follows:

No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility. Article I, Section 10, paragraph 1.

No state shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States, and all such laws shall be subject to the revision and control of the Congress. No state shall, without the con-

sent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power; or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay. Article I, Section 10, paragraph 2.

## JUDICIAL EXPLICATIONS

Hollingsworth v. Virginia, 3 Dall. 378 (1798)  
 Hawke v. Smith, 253 U.S. 221 (1920)  
 Dillon v. Gloss, 256 U.S. 368 (1921)  
 Luther v. Borden, 7 How. 1 (1849)  
 United States v. Cruikshank, 92 U.S. 542 (1876)  
 Pacific States Telephone and Telegraph Co. v. Oregon, 223 U.S. 118 (1912)  
 Fairbanks v. United States, 181 U.S. 283 (1901)  
 Spalding and Brothers v. Edwards, 262 U.S. 66 (1923)  
 South Carolina v. Georgia, 93 U.S. 4 (1876)  
 Dartmouth College v. Woodward, 4 Wheat. 518 (1819)  
 Craig v. Missouri, 4 Peters 410 (1830)  
 Charles River Bridge Co. v. Warren Bridge Co., 11 Peters 420 (1837)  
 Inman Steamship Co. v. Tinker, 94 U.S. 238 (1877)  
 Stone v. Mississippi, 101 U.S. 814 (1880)  
 State of Virginia v. State of Tennessee, 148 U.S. 503 (1893)

## INTERSTATE RELATIONS

## RECOGNITION OF OFFICIAL ACTS

**Details in Convention.** Full faith shall be given in each state to the acts of the legislatures, and to the records and judicial proceedings of the courts and magistrates, of every other state. Article XVI, Committee of Detail. *Aug. 6*

**Williamson:** Moved to substitute, in place of it, the words of the Articles of Confederation on the same subject. He did not understand precisely the meaning of the article. *Aug. 29*

**Wilson and Johnson:** Supposed the meaning to be that judg-

ments in one state should be the ground of actions in other states; and that acts of the legislatures should be included, for the sake of acts of insolvency, etc.

C. Pinckney: Moved to commit Article XVI, with the following proposition: "To establish uniform laws upon the subject of bankruptcies, and respecting the damages arising on the protest of foreign bills of exchange."

Gorham: Was for agreeing to the article, and committing the proposition.

Madison: Was for committing both. He wished the legislature might be authorized to provide for the *execution* of judgments in other states, under such regulations as might be expedient. He thought that this might be safely done, and was justified by the nature of the Union.

Randolph: Said there was no instance of one nation executing judgments of the courts of another nation. He moved the following proposition: "Whenever the act of any state, whether legislative, executive, or judiciary, shall be attested and exemplified under the seal thereof, such attestation and exemplification shall be deemed in other states as full proof of the existence of that act; and its operation shall be binding in every other state, in all cases to which it may relate, and which are within the cognizance and jurisdiction of the state wherein the said act was done."

On the question for committing Article XVI, with C. Pinckney's motion: Yeas 9 (Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia); nays 2 (New Hampshire, Massachusetts).

The motion of Randolph was also committed, *nem. con.*

G. Morris: Moved to commit also the following proposition on the same subject: "Full faith ought to be given in each state to the public acts, records, and judicial proceedings, of every other state; and the legislature shall, by general laws, determine the proof and effect of such acts, records, and proceedings"; and it was committed, *nem. con.*

Sept. 1 Rutledge, for the committee to whom Article XVI was referred, submitted the following report: Full faith and credit ought to

be given in each state to the public acts, records, and judicial proceedings of every other state; and the legislature shall, by general laws, prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect which judgments obtained in one state shall have in another.

G. Morris: Moved to amend the report concerning the respect to be paid to acts, records, etc., of one state in other states (see September 1) by striking out "judgments obtained in one state shall have in another"; and to insert the word "thereof" after the word "effect." Sept. 3

Mason: Favored the motion, particularly if the "effect" was to be restrained to judgments and judicial proceedings.

Wilson: Remarked that if the legislature were not allowed to *declare the effect*, the provision would amount to nothing more than what now takes place among all independent nations.

Johnson: Thought the amendment, as worded, would authorize the general legislature to declare the effect of legislative acts of one state in another state.

Randolph: Considered it as strengthening the general objection against the plan that its definition of the powers of the government was so loose as to give it opportunities of usurping all the state powers. He was for not going further than the report, which enables the legislature to provide for the effect of *judgments*.

On the amendment, as moved by G. Morris: Yeas 6 (Massachusetts, Connecticut, New Jersey, Pennsylvania, North Carolina, South Carolina); nays 3 (Maryland, Virginia, Georgia).

On motion of Madison, the words "ought to" were struck out and "shall" inserted; and "shall," between "legislature" and "by general laws," struck out, and "may" inserted, *nem. con.*

On the question to agree to the report as amended, viz.: "Full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state, and the legislature may, by general laws, prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof": it was agreed to without a count of the states.

- Sept. 12* **Conclusions in Convention.** Full faith and credit shall be given, in each state, to the public acts, records, and judicial proceedings of every other state. And the Congress may, by general laws, prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof. Article IV, Section 1. Report of Committee on Style and Arrangement.
- Sept. 17* The final draft of the Constitution, approved on this day, included the recommendation of the Committee on Style and Arrangement.

#### PRIVILEGES AND IMMUNITIES OF CITIZENS

- Aug. 6* **Details in Convention.** The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states. Article XIV, Committee of Detail.
- Aug. 28* C. C. Pinckney: Was not satisfied with it. He seemed to wish some provision should be included in favor of property in slaves.  
On the question on Article XIV: Yeas 9 (New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina); nays 1 (South Carolina); divided 1 (Georgia).
- Sept. 12* **Conclusions in Convention.** The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states. Article IV, Section 2, paragraph 1. Report of Committee on Style and Arrangement.
- Sept. 17* The completed Constitution included the committee's report without change.

#### EXTRADITION OF REFUGEES FROM JUSTICE

- Aug. 6* **Details in Convention.** Any person charged with treason, felony or high misdemeanor in any state, who shall flee from justice, and shall be found in any other state, shall, on demand of the executive power of the state from which he fled, be delivered up and removed to the state having jurisdiction of the offense. Article XV, Committee of Detail.

Article XV, being then taken up, the words "high misdemeanor" were struck out, and the words "other crime" inserted, in order to comprehend all proper cases; it being doubtful whether "high misdemeanor" had not a technical meaning too limited. Aug. 28

Butler and C. Pinckney: Moved to require "fugitive slaves and servants to be delivered up like criminals."

Wilson: This would oblige the executive of the state to do it, at the public expense.

Sherman: Saw no more propriety in the public seizing and surrendering a slave or servant than a horse.

Butler: Withdrew his proposition, in order that some particular provision might be made, apart from this Article.

Article XV, as amended, was then agreed to, *nem. con.*

Butler: Moved to insert after Article XV, "If any person bound to service or labor in any of the United States, shall escape into another state, he or she shall not be discharged from such service or labor, in consequence of any regulations subsisting in the state to which they escape, but shall be delivered up to the person justly claiming their service or labor,"—which was agreed to, *nem. con.* Aug. 29

**Conclusions in Convention.** A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, and removed to the state having jurisdiction of the crime. Article IV, Section 2, paragraph 2. Report of Committee on Style and Arrangement. Sept. 12

No person legally held to service or labor in one state, escaping to another, shall, in consequence of regulations subsisting therein, be discharged from such service or labor; but shall be delivered up, on claim of the party to whom such service or labor may be due. Article IV, Section 2, paragraph 3. Report of Committee on Style and Arrangement.

Article IV, Section 2 (the third paragraph), the term "legally" was struck out; and the words "under the laws thereof" inserted after the word "state," in compliance with the wish of Sept. 15

some who thought the term *legal* equivocal, and favoring the idea that slavery was legal in a moral view.

*Sept. 17* The provisions of the completed Constitution are as follows: A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime. Article IV, Section 2, paragraph 2.

No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor; but shall be delivered up, on claim of the party to whom such service or labor may be due. Article IV, Section 2, paragraph 3.

#### CONTROVERSIES BETWEEN STATES

*Aug. 6* **Details in Convention.** In all disputes and controversies now subsisting, or that may hereafter subsist, between two or more states, respecting jurisdiction or territory, the Senate shall possess the following powers:—Whenever the legislature, or the executive authority, or lawful agent of any state, in controversy with another, shall by memorial to the Senate, state the matter in question, and apply for a hearing, notice of such memorial and application shall be given, by order of the Senate, to the legislature, or the executive authority, of the other state in controversy. The Senate shall also assign a day for the appearance of the parties, by their agents, before that house. The agents shall be directed to appoint, by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question. But if the agents cannot agree, the Senate shall name three persons out of each of the several states; and from the list of such persons, each party shall alternately strike out one, until the number shall be reduced to thirteen; and from that number, not less than seven, nor more than nine names, as the Senate shall direct, shall, in

their presence, be drawn out by lot; and the persons whose names shall be so drawn, or any five of them, shall be commissioners or judges to hear and finally determine the controversy; provided a majority of the judges who shall hear the cause agree in the determination. If either party shall neglect to attend at the day assigned, without showing sufficient reasons for not attending, or being present shall refuse to strike, the Senate shall proceed to nominate three persons out of each state, and the clerk of the Senate shall strike in behalf of the party absent or refusing. If any of the parties shall refuse to submit to the authority of such court, or shall not appear to prosecute or defend their claim or cause, the court shall nevertheless proceed to pronounce judgment. The judgment shall be final and conclusive. The proceedings shall be transmitted to the president of the Senate, and shall be lodged among the public records for the security of the parties concerned. Every commissioner shall, before he sit in judgment, take an oath to be administered by one of the judges of the supreme or superior court of the state where the cause shall be tried, "well and truly to hear and determine the matter in question, according to the best of his judgment, without favor, affection, or hope of reward." Article IX, Section 2, Committee of Detail.

All controversies concerning lands claimed under different grants of two or more states, whose jurisdictions, as they respect such lands, shall have been decided or adjusted subsequently to such grants, or any of them, shall, on application to the Senate, be finally determined, as near as may be, in the same manner as is before prescribed for deciding controversies between different states. Article IX, Section 3, Committee of Detail.

The jurisdiction of the Supreme Court shall extend . . . to controversies between two or more states (except such as shall regard territory or jurisdiction). . . . Article XI, Section 3, Committee of Detail.

The second and third sections of Article IX being taken up:  
Rutledge: Said this provision for deciding controversies between

*Aug. 24*



the states was necessary under the Confederation, but will be rendered unnecessary by the national judiciary now to be established; and moved to strike it out.

Johnson: Seconded the motion.

Sherman: Concurred. So did Dayton.

Williamson: Was for postponing instead of striking out, in order to consider whether this might not be a good provision, in cases where the judiciary were interested, or too closely connected with the parties.

Gorham: Had doubts as to striking out. The judges might be connected with the states being parties. He was inclined to think the mode proposed in the clause would be more satisfactory than to refer such cases to the judiciary.

On the question for postponing the second and third sections, it passed in the negative: Yeas 3 (New Hampshire, North Carolina, Georgia); nays 7 (Massachusetts, Connecticut, New Jersey, Delaware, Maryland, Virginia, South Carolina); absent 1 (Pennsylvania).

Wilson: Urged the striking out, the judiciary being a better provision.

On the question for striking out the second and third sections of Article IX: Yeas 8 (New Hampshire, Connecticut, New Jersey, Delaware, Maryland, Virginia, South Carolina, Massachusetts); nays 2 (North Carolina, Georgia); absent 1 (Pennsylvania).

[For further development of provision for controversies between states, see the jurisdiction of the federal judiciary, Chapter 17.]

#### JUDICIAL EXPLICATIONS

Thompson v. Whitman, 18 Wall. 457 (1874)

Supreme Council of Royal Arcanum v. Green, 237 U.S. 531 (1915)

Coryfield v. Coryell, 4 Wash. 371 (1825)

Paul v. Virginia, 8 Wall. 168 (1869)

Ward v. Maryland, 12 Wall. 418 (1870)

Blake v. McClung, 172 U.S. 239 (1898)

Kentucky v. Dennison, 24 How. 66 (1861)

## CHAPTER 19

### SAFEGUARDS OF THE CONSTITUTION

#### FISCAL SAFEGUARDS

##### PUBLIC DEBTS AND PERMANENT REVENUE

**Details in Convention.** Rutledge: Moved to refer a clause, "that funds appropriated to public creditors should not be diverted to other purposes." *Aug. 18*

Mason: Was much attached to the principle, but was afraid such a fetter might be dangerous in time of war. He suggested the necessity of preventing the danger of perpetual revenue, which must of necessity subvert the liberty of any country. If it be objected to on the principle of Mr. Rutledge's motion, that public credit may require perpetual provisions, that case might be excepted; it being declared that in other cases no taxes should be laid for a longer term than —— years. He considered the caution observed in Great Britain on this point, as the palladium of public liberty.

Rutledge's motion was referred.

Rutledge: He then moved that a grand committee be appointed to consider the necessity and expediency of the United States assuming all the state debts. A regular settlement between the Union and the several states would never take place. The assumption would be just, as the state debts were contracted in the common defense. It was necessary, as the taxes on imports, the only sure source of revenue, were to be given up to the Union. It was politic, as by disburdening the people of the state debts, it would conciliate them to the plan.

King and C. Pinckney: Seconded the motion.

Mason: Interposed a motion that the committee prepare a clause for restraining perpetual revenue, which was agreed to, *nem. con.*

Sherman: Thought it would be better to authorize the legislature to assume the state debts than to say positively it should be done. He considered the measure as just, and that it would have a good effect to say something about the matter.

Ellsworth: Differed from Mr. Sherman. As far as the state debts ought in equity to be assumed, he conceived that they might and would be so.

C. Pinckney: Observed that a great part of the state debts were of such a nature that, although in point of policy and true equity they ought to be, yet would they not be, viewed in the light of federal expenditures.

King: Thought the matter of more consequence than Mr. Ellsworth seemed to do; and that it was well worthy of commitment. Besides the considerations of justice and policy which had been mentioned, it might be remarked that the state creditors, an active and formidable party, would otherwise be opposed to a plan which transferred to the Union the best resources of the states without transferring the state debts at the same time. The state creditors had generally been the strongest foes to the impost plan. The state debts probably were of greater amount than the federal. He would not say that it was practicable to consolidate the debts, but he thought it would be prudent to have the subject considered by a committee.

On Rutledge's motion, that a committee be appointed to consider of the assumption, etc., it was agreed to: Yeas 6 (Massachusetts, Connecticut, Virginia, North Carolina, South Carolina, Georgia); nays 4 (New Hampshire, New Jersey, Delaware, Maryland); divided 1 (Pennsylvania).

King: Suggested that all unlocated lands of particular states ought to be given up if state debts were to be assumed.

Williamson: Concurred in the idea.

## FEDERAL DISBURSEMENTS

- Fundamentals in Convention.** Gerry: For the committee on representation, reported: “. . . No money shall be drawn from the public treasury but in pursuance of appropriations to be originated in the first branch.” *July 5*
- The above recommendation was adopted as a part of the amended report of the committee on representation: Yeas 5 (Connecticut, New Jersey, Delaware, Maryland, North Carolina); nays 4 (Pennsylvania, Virginia, South Carolina, Georgia); divided 1 (Massachusetts). *July 16*
- Agreement Referred to Committee of Detail.** . . . No money shall be drawn from the public treasury but in pursuance of appropriations to be originated by the first branch. Part of the tenth resolution embodying agreements in Convention on fundamentals. *July 26*
- Details in Convention.** . . . No money shall be drawn from the public treasury but in pursuance of appropriations that shall originate in the House of Representatives. Article IV, Section 5, Committee of Detail. *Aug. 6*
- On the question on the last clause of Article IV, Section 5, viz.: “No money shall be drawn from the public treasury but in pursuance of *appropriations* that shall originate in the House of Representatives: Yeas 1 (Massachusetts); nays 10 (New Hampshire, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia). *Aug. 13*
- Brearley: For Committee on Unfinished Business, appointed August 31 and composed of a member from each state as follows: Gilman, King, Sherman, Brearley, G. Morris, Dickinson, Carroll, Madison, Williamson, Butler, and Baldwin, submitted the following proposition: . . . No money shall be drawn from the treasury but in consequence of appropriations made by law. *Sept. 5*
- The clause of the report made on the fifth of September and postponed was taken up, to wit: “. . . No money shall be *Sept. 8*

drawn from the treasury but in consequence of appropriations made by law."

*Sept. 12* **Conclusions in Convention.** No money shall be drawn from the treasury but in consequence of appropriations made by law. Article I, Section 9, paragraph 6. Report of the Committee on Style and Arrangement.

*Sept. 14* **Mason:** Moved a clause requiring, "that an account of the public expenditures should be annually published."

**Gerry:** Seconded the motion.

**G. Morris:** Urged that this would be impossible in many cases.

**King:** Remarked that the term expenditures went to every minute shilling. This would be impracticable. Congress might indeed make a monthly publication, but it would be in such general statements as would afford no satisfactory information.

**Madison:** Proposed to strike out "annually" from the motion, and insert "from time to time," which would enjoin the duty of frequent publications and leave enough to the discretion of the legislature. Require too much and the difficulty will beget a habit of doing nothing. The Articles of Confederation require half yearly publications on this subject. A punctual compliance being often impossible, the practice has ceased altogether.

**Wilson:** Seconded and supported the motion. Many operations of finance cannot be properly published at certain times.

**C. Pinckney:** Was in favor of the motion.

**Fitzsimons:** It is absolutely impossible to publish expenditures in the full extent of the term.

**Sherman:** Thought "from time to time" the best rule to be given. "Annually" was struck out, and those words inserted, *nem. con.*

**Amended motion:** To be added after "appropriations made by law," as follows: "and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time."

*Sept. 17* Included in the completed Constitution, approved this day: No money shall be drawn from the treasury but in consequence

of appropriations made by law: and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time. Article I, Section 9, paragraph 6.

## FEDERAL TAXING POWERS

- Details in Convention.** No capitation tax shall be laid, unless in proportion to the census herein before directed to be taken. Article VII, Section 5, Committee of Detail. *Aug. 6*
- McHenry and C. C. Pinckney: Made the following proposition: All duties, imposts and excises, prohibitions or restraints, laid or made by the legislature of the United States, shall be uniform and equal throughout the United States. *Aug. 25*
- This proposal was referred, *nem. con.*, to a committee composed of a member from each state, as follows: Langdon, Gorham, Sherman, Dayton, Fitzsimons, Read, Carroll, Mason, Williamson, Butler, Few.
- Article VII, Section 5, was agreed to, *nem. con.*, as reported.
- Sherman: For the above committee, made the following report: ". . . All tonnage, duties, imposts, and excises laid by the legislature, shall be uniform throughout the United States." *Aug. 28*
- The word "tonnage" was struck out, *nem. con.*, as comprehended in "duties." The committee report thus amended was agreed to, *nem. con.* *Aug. 31*
- Conclusions in Convention.** No capitation tax shall be laid, unless in proportion to the census hereinbefore directed to be taken. Article I, Section 9, paragraph 4. Report of Committee on Style and Arrangement. *Sept. 12*
- The words "but all such duties, imposts and excises, shall be uniform throughout the United States," were unanimously annexed to the power of taxation. *Sept. 14*
- Article I, Section 9, "No capitation tax shall be laid, unless, etc.":
- Read: Moved to insert after "capitation" the words, "or other direct tax." He was afraid that some liberty might otherwise be taken to saddle the states with a readjustment, by this rule,

of past requisitions of Congress; and that his amendment, by giving another cast to the meaning, would take away the pretext.

Williamson: Seconded the motion, which was agreed to.

*Sept. 17* Included in the completed Constitution, approved this day: . . . But all duties, imposts, and excises, shall be uniform throughout the United States. Article I, Section 8, paragraph 1.

No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken. Article I, Section 9, paragraph 4.

#### APPROPRIATIONS FOR FEDERAL ARMY

*Sept. 5* Details in Convention. Brearley: For the Committee on Unfinished Business, submitted the following recommendation: To add to the clause "to raise and support armies" the words "but no appropriation of money to that use shall be for a longer term than two years."

Gerry: Objected that it admitted of appropriations to an army for two years instead of one, for which he could not conceive a reason; that it implied there was to be a standing army, which he inveighed against as dangerous to liberty—as unnecessary even for so great an extent of country as this, and if necessary, some restriction on the number and duration ought to be provided. Nor was this a proper time for such an innovation. The people would not bear it.

Sherman: Remarked that the appropriations were permitted only, not required to be for two years. As the legislature is to be biennially elected, it would be inconvenient to require appropriations to be for one year, as there might be no session within the time necessary to renew them. He should himself, he said, like a reasonable restriction on the number and continuance of an army in time of peace.

The clause was then agreed to, *nem. con.*

*Sept. 12* Conclusions in Convention. . . . But no appropriation of money to that use shall be for a longer term than two years.

Article I, Section 8, paragraph 12. Report of Committee on Style and Arrangement.

The completed Constitution, approved this day, included the above recommendation of the Committee on Style and Arrangement. *Sept. 17*

### PERSONAL RIGHTS

#### RIGHTS UNDER THE CONFEDERATION

**Conclusions in Convention.** All debts contracted, and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution as under the Confederation. Article VI, paragraph 1. Report of Committee on Style and Arrangement. *Sept. 12*

The recommendation of the Committee on Style and Arrangement was included in the completed Constitution, approved this day. *Sept. 17*

#### WRIT OF HABEAS CORPUS

**Details in Convention.** C. Pinckney: Submitted the following proposition for reference to the Committee of Detail: The privileges and benefit of the writ of habeas corpus shall be enjoyed in this government, in the most expeditious and ample manner; and shall not be suspended by the legislature except upon the most urgent and pressing occasions, and for a limited time not exceeding —— months. *Aug. 20*

C. Pinckney: Urging the propriety of securing the benefit of the habeas corpus in the most ample manner, moved that it should not be suspended but on the most urgent occasions, and then only for a limited time not exceeding twelve months. *Aug. 28*

Rutledge: Was for declaring the habeas corpus inviolate. He did not conceive that a suspension could ever be necessary, at the same time, through all the states.

G. Morris: Moved that "The privilege of the writ of habeas corpus shall not be suspended, unless where, in cases of rebellion or invasion, the public safety may require it."



Wilson: Doubted whether in any case a suspension could be necessary, as the discretion now exists with judges, in most important cases, to keep in gaol or admit to bail.

The motion to the word "unless" was agreed to, *nem. con.* On the remaining part: Yeas 7 (New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, Virginia); nays 3 (North Carolina, South Carolina, Georgia).

*Sept. 12* **Conclusions in Convention.** The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it. Article I, Section 9, paragraph 2. Report of the Committee on Style and Arrangement.

*Sept. 17* The recommendation of the Committee on Style and Arrangement became a part of the completed Constitution without change.

#### BILLS OF ATTAINDER AND EX POST FACTO LAWS

*Aug. 22* **Details in Convention.** Gerry and McHenry: Moved to insert, after the second section, Article VII, the clause following, to wit: "The legislature shall pass no bill of attainder, nor any ex post facto law."

Gerry: Urged the necessity of this prohibition, which he said was greater in the national than the state legislature: because the number of members in the former being fewer, they were on that account the more to be feared.

G. Morris: Thought the precaution as to ex post facto laws unnecessary; but essential as to bills of attainder.

Ellsworth: Contended that there was no lawyer, no civilian, who would not say that ex post facto laws were void of themselves. It cannot, then, be necessary to prohibit them.

Wilson: Was against inserting any thing in the Constitution as to ex post facto laws. It will bring reflections on the Constitution, and proclaim that we are ignorant of the first principles of legislation, or are constituting a government that will be so. The question being divided, the first part of the motion relating to bills of attainder was agreed to, *nem. con.*

On the second part, relating to ex post facto laws: Carroll: Remarkd that experience overruled all other calculations. It had proved that, in whatever light they might be viewed by civilians or others, the state legislatures had passed them, and they had taken effect.

Wilson: If these prohibitions in the state constitutions have no effect, it will be useless to insert them in this Constitution. Besides, both sides will agree to the principle, but will differ as to its application.

Williamson: Such a prohibitory clause is in the constitution of North Carolina; and though it had been violated, it has done good there, and may do good here, because the judges can take hold of it.

Johnson: Thought the clause unnecessary, and implying an improper suspicion of the national legislature.

Rutledge: Was in favor of the clause.

On the question for inserting the prohibition of ex post facto laws: Yeas 7 (New Hampshire, Massachusetts, Delaware, Maryland, Virginia, South Carolina, Georgia); nays 3 (Connecticut, New Jersey, Pennsylvania); divided 1 (North Carolina).

**Conclusions in Convention.** No bill of attainder shall be passed, nor any ex post facto law. Article I, Section 9, paragraph 3. Report of Committee on Style and Arrangement. *Sept. 12*

Mason: Moved to strike out from the clause (Article I, Section 9), "no bill of attainder, nor any ex post facto law, shall be passed," the words, "nor any ex post facto law." He thought it not sufficiently clear that the prohibition meant by this phrase was limited to cases of a criminal nature; and no legislature ever did or can altogether avoid them in civil cases. *Sept. 14*

Gerry: Seconded the motion; but with a view to extend the prohibition to "civil cases," which he thought ought to be done.

On the question, all the states were no.

The first clause of Article I, Section 10, was altered so as to read, "no state shall . . . pass any bill of attainder, ex post facto law. . . ."

- Sept. 17* The completed Constitution, approved this day, included the following safeguards: No bill of attainder, or ex post facto law, shall be passed. Article I, Section 9, paragraph 3.  
 No state shall . . . pass any bill of attainder, ex post facto law, . . . Article I, Section 10, paragraph 1.

## RELIGIOUS TEST FOR OFFICE

- Aug. 20* **Details in Convention.** C. Pinckney: Submitted the following proposition for reference to the Committee of Detail: No religious test or qualification shall ever be annexed to any oath of office under the authority of the United States.
- Aug. 30* C. Pinckney: Moved to add to the requirement of an oath from national and state officials: "but no religious test shall ever be required as a qualification to any office or public trust under the authority of the United States."  
 Sherman: Thought it unnecessary, the prevailing liberality being a sufficient security against such tests.  
 G. Morris and C. C. Pinckney: Approved the motion.  
 The motion was agreed to, *nem. con.*, and then the whole article: North Carolina only, no; and Maryland, divided.
- Sept. 12* **Conclusions in Convention.** . . . But no religious test shall ever be required as a qualification to any office or public trust under the United States. Article VI, paragraph 3, last clause. Report of Committee on Style and Arrangement.
- Sept. 17* The above recommendation of the Committee on Style and Arrangement was finally approved on this day.

## DEFEATED PROPOSAL

- Sept. 14* C. Pinckney and Gerry: Moved to insert a declaration, "that the liberty of the press should be inviolably observed."  
 Sherman: It is unnecessary. The power of Congress does not extend to the press.  
 On the question: Yeas 4 (Massachusetts, Maryland, Virginia, South Carolina); nays 7 (New Hampshire, Connecticut, New Jersey, Pennsylvania, Delaware, North Carolina, Georgia).

## TRIALS

## TRIALS FOR CRIMINAL OFFENSES

- Details in Convention.** The trial of all criminal offenses (except in cases of impeachment) shall be in the state where they shall be committed; and shall be by jury. Article XI, Section 4, Committee of Detail. *Aug. 6*
- Section 4 was so amended, *nem. con.*, as to read: "The trial of all crimes (except in cases of impeachment) shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, then the trial shall be at such place or places as the legislature may direct." The object of this amendment was to provide for trial by jury of offenses committed out of any state. *Aug. 28*
- Conclusions in Convention.** The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed. Article III, Section 2, paragraph 3. Report of Committee on Style and Arrangement. *Sept. 12*
- Williamson: Observed to the House that no provision was yet made for juries in civil cases, and suggested the necessity of it.
- Gorham: It is not possible to discriminate equity cases from those in which juries are proper. The representatives of the people may be safely trusted in this matter.
- Gerry: Urged the necessity of juries to guard against corrupt judges. He proposed that the committee last appointed should be directed to provide a clause for securing the trial by juries.
- Mason: Perceived the difficulty mentioned by Mr. Gorham. The jury cases cannot be specified. A general principle laid down, on this and some other points, would be sufficient. He wished the plan had been prefaced with a Bill of Rights, and would second a motion if made for the purpose. It would give great

quiet to the people; and with the aid of the state declarations, a bill might be prepared in a few hours.

Gerry: Concurred in the idea, and moved for a committee to prepare a Bill of Rights.

Mason: Seconded the motion.

Sherman: Was for securing the rights of the people where requisite. The state declarations of rights are not repealed by this Constitution; and being in force are sufficient. There are many cases where juries are proper, which cannot be discriminated. The legislature may be safely trusted.

Mason: The laws of the United States are to be paramount to state bills of rights.

On the question for a committee to prepare a Bill of Rights: Yeas 5 (New Hampshire, Connecticut, New Jersey, Pennsylvania, Delaware); nays 5 (Maryland, Virginia, North Carolina, South Carolina, Georgia); absent 1 (Massachusetts).

Sept. 15 Article III, Section 2 (the third paragraph):

C. Pinckney and Gerry: Moved to annex to the end, "and a trial by jury shall be preserved as usual in civil cases."

Gorham: The constitution of juries is different in different states, and the trial itself is *usual* in different cases in different states.

King: Urged the same objections.

C. C. Pinckney: Also. He thought such a clause in the Constitution would be pregnant with embarrassments.

The motion was disagreed to, *nem. con.*

Sept. 17 The Constitution completed on this day included the recommendation of the Committee on Style and Arrangement unchanged.

#### TRIALS FOR DISLOYALTY

Aug. 6 **Details in Convention.** Treason against the United States shall consist only in levying war against the United States, or any of them; and in adhering to the enemies of the United States, or any of them. The legislature of the United States shall have power to declare the punishment of treason. No person shall

be convicted of treason; unless on the testimony of two witnesses. No attainder of treason shall work corruption of blood, nor forfeiture, except during the life of the person attainted. Article VII, Section 2, Committee of Detail.

Madison: Thought the definition too narrow. It did not appear to go as far as the statute of Edward III. He did not see why more latitude might not be left to the legislature. It would be as safe as in the hands of state legislatures; and it was inconvenient to bar a discretion which experience might enlighten, and which might be applied to good purposes as well as be abused.

*Aug. 20*

Mason: Was for pursuing the statute of Edward III.

G. Morris: Was for giving to the Union an exclusive right to declare what should be treason. In case of a contest between the United States and a particular state, the people of the latter must, under the disjunctive terms of the clause, be traitors to one or other authority.

Randolph: Thought the clause defective in adopting the words "in adhering" only. The British statute adds, "giving them aid and comfort," which had a more extensive meaning.

Ellsworth: Considered the definition as the same in fact with that of the statute.

G. Morris: "Adhering" does not go so far as "giving aid and comfort," or the latter words may be restrictive of "adhering." In either case the statute is not pursued.

Wilson: Held "giving aid and comfort" to be explanatory, not operative words; and that it was better to omit them.

Dickinson: Thought the addition of "giving aid and comfort" unnecessary and improper; being too vague and extending too far. He wished to know what was meant by the "testimony of two witnesses"; whether they were to be witnesses to the same overt act, or to different overt acts. He thought also that proof of an overt act ought to be expressed as essential in the case.

Johnson: Considered "giving aid and comfort" as explanatory of "adhering," and that something should be inserted in the definition concerning overt acts. He contended that treason

could not be both against the United States and individual states; being an offense against the sovereignty, which can be but one in the same community.

Madison: Remarked that "and," before "in adhering," should be changed into "or"; otherwise both offenses, viz., of "levying war" and of "adhering to the enemy" might be necessary to constitute treason. He added that as the definition here was of treason against *the United States*, it would seem that the individual states would be left in possession of a concurrent power, so far as to define and punish treason particularly against themselves, which might involve double punishment. It was moved that the whole clause be recommitted, which was lost, the votes being equally divided: Yeas 5 (New Jersey, Pennsylvania, Maryland, Virginia, Georgia); nays 5 (New Hampshire, Massachusetts, Connecticut, Delaware, South Carolina); divided 1 (North Carolina).

Wilson and Johnson: Moved that "or any of them" after "United States" be struck out, in order to remove the embarrassment; which was agreed to, *nem. con.*

Madison: This has not removed the embarrassment. The same act might be treason against the United States, as here defined; and against a particular state, according to its laws.

Ellsworth: There can be no danger to the general authority from this, as the laws of the United States are to be apparent.

Johnson: Was still of opinion there could be no treason against a particular state. It could not, even at present, as the Confederation now stands; the sovereignty being in the Union; much less can it be under the proposed system.

Mason: The United States will have a qualified sovereignty only. The individual states will retain a part of the sovereignty. An act may be treason against a particular state, which is not so against the United States. He cited the rebellion of Bacon in Virginia, as an illustration of the doctrine.

Johnson: That case would amount to treason against the sovereign, the supreme sovereign, the United States.

King: Observed that the controversy relating to treason might be of less magnitude than was supposed, as the legislature

might punish capitally under other names than treason.

G. Morris and Randolph: Wished to substitute the words of the British statute, and moved to postpone Article VII, Section 2, in order to consider the following substitute: "Whereas it is essential to the preservation of liberty to define precisely and exclusively what shall constitute the crime of treason, it is therefore ordained, declared and established, that if a man do levy war against the United States, within their territories, or be adherent to the enemies of the United States within the said territories, giving them aid and comfort within their territories or elsewhere, and thereof be provably attainted of open deed, by the people of his condition, he shall be adjudged guilty of treason."

On this question: Yeas 2 (New Jersey, Virginia); nays 8 (Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, North Carolina, South Carolina, Georgia).

It was then moved to strike out "against the United States" after "treason," so as to define treason generally; and on this question: Yeas 8 (Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, South Carolina, Georgia); nays 2 (Virginia, North Carolina).

It was then moved to insert, after "two witnesses," the words, "to the same overt act."

Franklin: Wished this amendment to take place. Prosecutions for treason were generally virulent; and perjury too easily made use of against innocence.

Wilson: Much may be said on both sides. Treason may sometimes be practiced in such a manner as to render proof extremely difficult—as in a traitorous correspondence with an enemy.

On the question as to "same overt act": Yeas 8 (New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, South Carolina, Georgia); nays 3 (New Jersey, Virginia, North Carolina).

King: Moved to insert, before the word "power," the word "sole," giving the United States the exclusive right to declare the punishment of treason.



Broom: Seconds the motion.

Wilson: In cases of a general nature, treason can only be against the United States; and in such they should have the sole right to declare the punishment; yet in many cases it may be otherwise. The subject was, however, intricate, and he distrusted his present judgment on it.

King: This amendment results from the vote defining treason generally, by striking out "against the United States," which excludes any treason against particular states. These may, however, punish offenses as high misdemeanors.

On the question for inserting the word "sole": Yeas 5 (New Hampshire, Massachusetts, Pennsylvania, Delaware, South Carolina); nays 6 (Connecticut, New Jersey, Maryland, Virginia, North Carolina, Georgia).

Wilson: The clause is ambiguous now. "Sole" ought either to have been inserted, or "against the United States" to be reinstated.

King: No line can be drawn between levying war and adhering to the enemy against the United States and against an individual state. Treason against the latter must be so against the former.

Sherman: Resistance against the laws of the United States, as distinguished from resistance against the laws of a particular state, forms the line.

Ellsworth: The United States are sovereign on one side of the line, dividing the jurisdictions—the states on the other. Each ought to have power to defend their respective sovereignties.

Dickinson: War or insurrection against a member of the Union must be so against the whole body; but the Constitution should be made clear on this point.

The clause was reconsidered, *nem. con.*; and then Wilson and Ellsworth moved to reinstate "against the United States" after "treason"; on which question: Yeas 6 (Connecticut, New Jersey, Maryland, Virginia, North Carolina, Georgia); nays 5 (New Hampshire, Massachusetts, Pennsylvania, Delaware, South Carolina).

Madison: Was not satisfied with the footing on which the clause

now stood. As treason against the United States involves treason against particular states, and vice versa, the same act may be twice tried, and punished by the different authorities.

G. Morris: Viewed the matter in the same light.

It was moved and seconded to amend the sentence to read: "Treason against the United States shall consist only in levying war against them, or in adhering to their enemies"; which was agreed to.

Mason: Moved to insert the words "giving them aid and comfort" as restrictive of "adhering to their enemies, etc." The latter, he thought, would be otherwise too indefinite. This motion was agreed to, Connecticut and Delaware and Georgia only being in the negative.

L. Martin: Moved to insert after conviction, etc., "or on confession in open court"; and on the question (the negative states thinking the words superfluous), it was agreed to: Yeas 7 (New Hampshire, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia); nays 3 (Massachusetts, South Carolina, Georgia); divided 1 (North Carolina).

Article VII, Section 2, as amended, was then agreed to, *nem. con.*

**Conclusions in Convention.** Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

*Sept. 12*

The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, nor forfeiture, except during the life of the person attainted. Article III, Section 3. Report of Committee on Style and Arrangement.

Developments were completed this day by the inclusion of the committee's recommendation in the final draft of the Constitution.

*Sept. 17*

## RESTRAINTS ON FEDERAL OFFICIALS

## DISQUALIFICATION FOR APPOINTMENT TO OFFICE

*May 29* Preliminaries in Committee of the Whole. Resolved, that the members of the first branch of the national legislature ought . . . to be ineligible to any office established by a particular state, or under the authority of the United States, except those peculiarly belonging to the functions of the first branch, during the term of service, and for the space of —— after its expiration; to be incapable of re-election for the space of —— after the expiration of their term of service, and to be subject to recall.

Resolved, that the members of the second branch of the national legislature ought . . . to be ineligible to any office established by a particular state, or under the authority of the United States, except those peculiarly belonging to the functions of the second branch, during the term of service; and for the space of —— after the expiration thereof. Propositions in Virginia Plan.

*June 12* On a question for striking out the “*ineligibility* of members of the national legislature to *state offices*”: Yeas 4 (Connecticut, New York, North Carolina, South Carolina); nays 5 (New Jersey, Pennsylvania, Delaware, Virginia, Georgia); divided 1 (Maryland).

On the question for agreeing to the clause as amended: Yeas 10 (Massachusetts, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia); nays 1 (Connecticut).

On a question for making members of the national legislature *ineligible* to any office under the national government for the term of three years after ceasing to be members: Yeas 1 (Maryland); nays 10 (Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia).

On the question for such ineligibility for one year: Yeas 8 (Massachusetts, Connecticut, New Jersey, Pennsylvania, Dela-

ware, Virginia, North Carolina, South Carolina); nays 2 (New York, Georgia); divided 1 (Maryland).

On the question moved by C. Pinckney for striking out "incapable of re-election into the first branch of the national legislature for ——— years, and subject to recall," agreed to, *nem. con.*

It was then moved, and agreed, that the clauses respecting the stipends and ineligibility of the second branch be the same as of the first branch, Connecticut disagreeing to the ineligibility.

**Fundamentals in Convention.** Resolved, that the members of the first branch of the national legislature ought . . . to be ineligible to any office established by a particular state, or under the authority of the United States (except those peculiarly belonging to the functions of the first branch), during the term of service, and under the national government for the space of one year after its expiration. Third resolution, Committee of the Whole. June 19

Resolved, that the members of the second branch of the national legislature ought . . . to be ineligible to any office established by a particular state, or under the authority of the United States (except those peculiarly belonging to the functions of the second branch), during the term of service, and under the national government for the space of one year after its expiration. Fourth resolution, Committee of the Whole.

Gorham: Moved to strike out the last member of the third resolution, concerning ineligibility of members of the first branch to office during the term of their membership, and for one year after. He considered it unnecessary and injurious. It was true, abuses had been displayed in Great Britain; but no one could say how far they might have contributed to preserve the due influence of the government, nor what might have ensued in case the contrary theory had been tried. June 22

Butler: Opposed it. This precaution against intrigue was necessary. He appealed to the example of Great Britain, where

men get into Parliament that they might get offices for themselves or their friends. This was the source of the corruption that ruined their government.

King: Thought we were refining too much. Such a restriction on the members would discourage merit. It would also give a pretext to the executive for bad appointments, as he might always plead this as a bar to the choice he wished to have made.

Wilson: Was against fettering elections and discouraging merit. He suggested, also, the fatal consequence in time of war of rendering, perhaps, the best commanders ineligible; appealed to our situation during the late war, and indirectly leading to a recollection of the appointment of the Commander-in-Chief out of Congress.

Mason: Was for shutting the door at all events against corruption. He enlarged on the venality and abuses, in this particular, in Great Britain; and alluded to the multiplicity of foreign embassies by Congress. The disqualification he regarded as a cornerstone in the fabric.

Hamilton: There are inconveniences on both sides. We must take man as we find him; and if we expect him to serve the public, must interest his passions in doing so. A reliance on pure patriotism had been the source of many of our errors. He thought the remark of Mr. Gorham a just one. It was impossible to say what would be the effect in Great Britain of such a reform as had been urged. It was known that one of the ablest politicians (Mr. Hume) had pronounced all that influence on the side of the Crown which went under the name of *corruption*, an essential part of the weight which maintained the equilibrium of the Constitution.

On Gorham's motion for striking out "ineligibility," it was lost by an equal division of the votes: Yeas 4 (Massachusetts, New Jersey, North Carolina, Georgia); nays 4 (Connecticut, Maryland, Virginia, South Carolina); divided 3 (New York, Pennsylvania, Delaware).

June 23

C. C. Pinckney: Moves to strike out the ineligibility of members of the first branch to offices established "by a particular

state." He argued from the inconvenience to which such a restriction would expose both the members of the first branch, and the states wishing for their services; and from the smallness of the object to be attained by the restriction. It would seem from the ideas of some, that we are erecting a kingdom to be divided against itself: he disapproved such a fetter on the legislature.

Sherman: Seconds the motion. It would seem that we are erecting a kingdom at war with itself. The legislature ought not to be fettered in such a case.

On the question: Yeas 8 (Connecticut, New York, New Jersey, Maryland, Virginia, North Carolina, South Carolina, Georgia); nays 3 (Massachusetts, Pennsylvania, Delaware).

Madison: Renewed his motion, yesterday made and waived, to render the members of the first branch "ineligible during their term of service, and for one year after, to such offices only as should be established, or the emolument augmented, by the legislature of the United States during the time of their being members." He supposed that the unnecessary creation of offices, and increase of salaries, were the evils most experienced, and that if the door was shut against them, it might properly be left open for the appointment of members to other offices as an encouragement to the legislature service.

A. Martin: Seconded the motion.

Butler: The amendment does not go far enough and would be easily evaded.

Rutledge: Was for preserving the legislature as pure as possible, by shutting the door against appointments of its own members to office, which was one source of its corruption.

Mason: The motion of my colleague is but a partial remedy for the evil. He appealed to him as a witness of the shameful partiality of the legislature of Virginia to its own members. He enlarged on the abuses and corruption in the British Parliament connected with the appointment of its members. He could not suppose that a sufficient number of citizens could not be found who would be ready, without the inducement of eligibility to offices, to undertake the legislative serv-

ice. Genius and virtue, it may be said, ought to be encouraged. Genius, for aught he knew, might; but that virtue should be encouraged by such a species of venality was an idea that at least had the merit of being new.

King: Remarked that we were refining too much in this business; and that the idea of preventing intrigue and solicitation of offices was chimerical. You say that no member shall himself be eligible to any office. Will this restrain him from availing himself of the same means which would gain appointments for himself, to gain them for his son, his brother, or any other object of his partiality? We were losing, therefore, the advantages on one side without avoiding the evils on the other.

Wilson: Supported the motion. The proper cure, he said, for corruption in the legislature was to take from it the power of appointing to offices. One branch of corruption would, indeed, remain, that of creating unnecessary offices, or granting unnecessary salaries, and for that the amendment would be a proper remedy. He animadverted on the impropriety of stigmatizing with the name of venality the laudable ambition of rising into the honorable offices of the government—an ambition most likely to be felt in the early and most incorrupt period of life, and which all wise and free governments had deemed it sound policy to cherish, not to check. The members of the legislature have, perhaps, the hardest and least profitable task of any who engage in the service of the state. Ought this merit to be made a disqualification?

Sherman: Observed that the motion did not go far enough. It might be evaded by the creation of a new office, the translation to it of a person from another office, and the appointment of a member of the legislature to the latter. A new embassy might be established to a new court, and an ambassador taken from another, in order to *create* a vacancy for a favorite member. He admitted that inconveniences lay on both sides. He hoped there would be sufficient inducements to the public service without resorting to the prospect of de-

sirable offices; and on the whole was rather against the motion of Mr. Madison.

Gerry: Thought there was great weight in the objection of Mr. Sherman. He added, as another objection against admitting the eligibility of members in any case, that it would produce intrigues of ambitious men for displacing proper officers, in order to create vacancies for themselves. In answer to Mr. King, he observed that although members, if disqualified themselves, might still intrigue and cabal for their sons, brothers, etc., yet as their own interests would be dearer to them than those of their nearest connections, it might be expected they would go greater lengths to promote them.

Madison: Had been led to this motion, as a middle ground between an eligibility in all cases and an absolute disqualification. He admitted the probable abuses of an eligibility of the members to offices particularly within the gift of the legislature. He had witnessed the partiality of such bodies to their own members, as had been remarked of the Virginia Assembly by his colleague (Col. Mason). He appealed, however, to him in turn to vouch another fact not less notorious in Virginia, that the backwardness of the best citizens to engage in the legislative service gave but too great success to unfit characters. The question was not to be viewed on one side only. The advantages and disadvantages on both ought to be fairly compared. The objects to be aimed at were to fill all offices with the fittest characters, and to draw the wisest and most worthy citizens into the legislative service. If, on one hand, public bodies were partial to their own members, on the other they were as apt to be misled by taking characters on report, or the authority of patrons and dependents. All who had been concerned in the appointment of strangers on those recommendations must be sensible of this truth. Nor would the partialities of such bodies be obviated by disqualifying their own members. Candidates for office would hover round the seat of government, or be found among the residents there, and practice all the means of courting the favor of the



members. A great proportion of the appointments made by the states were evidently brought about in this way. In the general government, the evil must be still greater, the characters of distant states being much less known throughout the United States, than those of the distant parts of the same state. The elections by Congress had generally turned on men living at the seat of the federal government, or in its neighborhood. As to the next object, the impulse to the legislative service was evinced by experience to be in general too feeble with those best qualified for it. This inconvenience would also be more felt in the national government than in the state governments, as the sacrifices required from the distant members would be much greater, and the pecuniary provisions, probably, more disproportionate. It would therefore be impolitic to add fresh objections to the legislative service by an absolute disqualification of its members. The point in question was whether this would be an objection with the most capable citizens. Arguing from experience, he concluded that it would. The legislature of Virginia would probably have been without many of its best members, if in that situation they had been ineligible to Congress, to the government, and other honorable offices of the state.

Butler: Thought characters fit for office would never be unknown.

Mason: If the members of the legislature are disqualified, still the honors of the state will induce those who aspire to them to enter that service, as the field in which they can best display and improve their talents, and lay the train for their subsequent advancement.

Jenifer: Remarked that in Maryland, the senators, chosen for five years, could hold no other office; and that this circumstance gained them the greater confidence of the people.

On the question for agreeing to the motion of Mr. Madison: Yeas 2 (Connecticut, New Jersey); nays 8 (New York, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia); divided 1 (Massachusetts).

Sherman: Moved to insert the words "and incapable of hold-

ing" after the words "ineligible to," which was agreed to without opposition.

The word "established" and the words "under the national government" were struck out of the third resolution.

Spaight: Called for a division of the question, in consequence of which it was so put as that it turned on the first member of it, on the ineligibility of members *during the term for which they were elected*: Yeas 8 (Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina); nays 2 (Pennsylvania, Georgia); divided 1 (Massachusetts).

On the second member of the sentence, extending ineligibility of members to one year after the term for which they were elected:

Mason: Thought this essential to guard against evasions by resignations, and stipulations for office to be fulfilled at the expiration of the legislative term.

Gerry: Had known such a case.

Hamilton: Evasions could not be prevented—as by proxies—by friends holding for a year, and then opening the way, etc.

Rutledge: Admitted the possibility of evasions but was for contracting them as far as possible.

On the question: Yeas 4 (New York, Delaware, Maryland, South Carolina); nays 6 (Massachusetts, Connecticut, New Jersey, Virginia, North Carolina, Georgia); divided 1 (Pennsylvania).

Butler: Moved to strike out the ineligibility of senators to *state offices*. June 26

Williamson: Seconded the motion.

Wilson: Remarked the additional dependence this would create in the Senators on the states. The longer the time, he observed, allotted to the officer, the more complete will be the dependence, if it exists at all.

C. C. Pinckney: Was for making the states, as much as could be conveniently done, a part of the general government. If the Senate was to be appointed by the states, it ought, in pursuance of the same idea, to be paid by the states; and the states ought not to be barred from the opportunity of calling

members of it into offices at home. Such a restriction would also discourage the ablest men from going into the Senate.

Williamson: Moved a resolution, so penned as to admit of the two following questions—first, whether the members of the Senate should be ineligible to and incapable of holding offices *under the United States*; secondly, whether, etc., under the *particular states*.

On the question to postpone, in order to consider Williamson's resolution: Yeas 8 (Connecticut, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia); nays 3 (Massachusetts, New York, New Jersey).

Gerry and Madison: Move to add to Mr. Williamson's first question, "and for one year thereafter."

On this amendment: Yeas 7 (Connecticut, New York, Delaware, Maryland, Virginia, North Carolina, South Carolina); nays 4 (Massachusetts, New Jersey, Pennsylvania, Georgia).

On Williamson's first question as amended, viz., "ineligible and incapable, etc., for one year, etc.": Agreed to unanimously.

On the second question as to ineligibility, etc., to *state offices*: Yeas 3 (Massachusetts, Pennsylvania, Virginia); nays 8 (Connecticut, New York, New Jersey, Delaware, Maryland, North Carolina, South Carolina, Georgia).

*July 26* **Agreements Referred to Committee of Detail.** Resolved, that the members of the first branch of the legislature ought . . . to be ineligible to, and incapable of holding, any office under the authority of the United States (except those peculiarly belonging to the functions of the first branch) during the term of service of the first branch. Third resolution on fundamentals.

Resolved, that the members of the second branch of the legislature of the United States ought . . . to be ineligible to, and incapable of holding, any office under the authority of the United States (except those peculiarly belonging to the functions of the second branch) during the term for which they are elected, and for one year thereafter. Fourth resolution on fundamentals.

**Details in Convention.** The members of each house shall be ineligible to, and incapable of holding, any office under the authority of the United States, during the time for which they shall respectively be elected: and the members of the Senate shall be ineligible to, and incapable of holding, any such office for one year afterwards. Article VI, Section 9, Committee of Detail. Aug. 6

C. Pinckney: Argued that the making the members ineligible to offices was *degrading* to them, and the more improper as their election into the legislature implied that they had the confidence of the people; that it was *inconvenient*, because the Senate might be supposed to contain the fittest men. He hoped to see that body become a school of public ministers, a nursery of statesmen. That it was *impolitic*, because the legislature would cease to be a magnet to the first talents and abilities. He moved to postpone the section in order to take up the following proposition, viz.: "the members of each house shall be incapable of holding any office under the United States for which they, or any others for their benefit, receive any salary, fees, or emoluments of any kind; and the acceptance of such office shall vacate their seats respectively." Aug. 14

Mifflin: Seconded the motion.

Mason: Ironically proposed to strike out the whole section, as a more effectual expedient for encouraging that exotic corruption which might not otherwise thrive so well in the American soil; for completing that aristocracy which was probably in the contemplation of some among us; and for inviting into the legislative service those generous and benevolent characters who will do justice to each other's merit by carving out offices and rewards for it. In the present state of American morals and manners, few friends, it may be thought, will be lost to the plan by the opportunity of giving premiums to a mercenary and depraved ambition.

Mercer: It is a first principle in political science that whenever the rights of property are secured, an aristocracy will grow out of it. Elective governments also necessarily become aristo-

cratic, because the rulers being few can and will draw emoluments for themselves from the many. The governments of America will become aristocracies. They are so already. The public measures are calculated for the benefit of the governors, not of the people. The people are dissatisfied, and complain. They change their rulers, and the public measures are changed, but it is only a change of one scheme of emolument to the rulers for another. The people gain nothing by it but an addition of instability and uncertainty to their other evils. Governments can only be maintained by *force* or *influence*. The executive has not *force*—deprive him of *influence*, by rendering the members of the legislature ineligible to executive offices, and he becomes a mere phantom of authority. The aristocratic part will not even let him in for a share of the plunder. The legislature must and will be composed of wealth and abilities, and the people will be governed by a junto. The executive ought to have a council, being members of both houses. Without such an influence the war will be between the aristocracy and the people. He wished it to be between the aristocracy and the executive. Nothing else can protect the people against those speculating legislatures, which are now plundering them throughout the United States.

Gerry: Read a resolution of the legislature of Massachusetts, passed before the act of Congress recommending the Convention, in which her deputies were instructed not to depart from the rotation established in the fifth Article of the Confederation; nor to agree, in any case, to give to the members of Congress a capacity to hold offices under the government. This, he said, was repealed in consequence of the act of Congress, with which the state thought it proper to comply in an unqualified manner. The sense of the state, however, was still the same. He could not think with Mr. Pinckney that the disqualification was degrading. Confidence is the road to tyranny. As to ministers and ambassadors, few of them were necessary. It is the opinion of a great many that they ought to be discontinued on our part, that none may be

sent among us, and that source of influence shut up. If the Senate were to appoint ambassadors, as seemed to be intended, they will multiply embassies for their own sakes. He was not so fond of those productions as to wish to establish nurseries for them. If they are once appointed, the House of Representatives will be obliged to provide salaries for them, whether they approve of the measures or not. If men will not serve in the legislature without a prospect of such offices, our situation is deplorable indeed. If our best citizens are actuated by such mercenary views, we had better choose a single despot at once. It will be more easy to satisfy the rapacity of one than of many. According to the idea of one gentleman (Mr. Mercer), our government, it seems, is to be a government of plunder. In that case, it certainly would be prudent to have but one rather than many to be employed in it. We cannot be too circumspect in the formation of this system. It will be examined on all sides, and with a very suspicious eye. The people, who have been so lately in arms against Great Britain for their liberties, will not easily give them up. He lamented the evils existing, at present, under our governments; but imputed them to the faults of those in office, not to the people. The misdeeds of the former will produce a critical attention to the opportunities afforded by the new system to like or greater abuses. As it now stands, it is as complete an aristocracy as ever was framed. If great powers should be given to the Senate, we shall be governed in reality by a junto, as has been apprehended. He remarked that it would be very differently constituted from Congress. In the first place, there will be but two deputies from each state; in Congress there may be seven, and are generally five. In the second place, they are chosen for six years; those of Congress annually. In the third place, they are not subject to recall; those of Congress are. And finally, in Congress *nine* states are necessary for all great purposes; here eight *persons* will suffice. Is it to be presumed that the people will ever agree to such a system? He moved to render the members of the House of Representatives, as well as of the Senate, ineligible, not only

during, but for one year after the expiration of their terms. If it should be thought that this will injure the legislature by keeping out of it men of abilities who are willing to serve in other offices, it may be required as a qualification for other offices that the candidates shall have served a certain time in the legislature.

G. Morris: Exclude the officers of the army and navy, and you form a band having a different interest from, and opposed to, the civil power. You stimulate them to despise and reproach those "talking lords who dare not face the foe." Let this spirit be roused at the end of a war, before your troops shall have laid down their arms, and though the civil authority be "entrenched in parchment to the teeth," they will cut their way to it. He was against rendering the members of the legislature ineligible to offices. He was for rendering them eligible again, after having vacated their seats by accepting office. Why should we not avail ourselves of their services if the people choose to give them their confidence? There can be little danger of corruption, either among the people, or the legislatures, who are to be the electors. If they say, we see their merits—we honor the men—we choose to renew our confidence in them; have they not a right to give them a preference—and can they be properly abridged of it?

Williamson: Introduced his opposition to the motion by referring to the question concerning "money bills." That clause, he said, was dead. Its ghost, he was afraid, would, notwithstanding, haunt us. It had been a matter of conscience with him to insist on it as long as there was hope of retaining it. He had swallowed the vote of rejection with reluctance. He could not digest it. All that was said, on the other side, was that the restriction was not *convenient*. We have now got a House of Lords which is to originate money bills. To avoid another *inconvenience*, we are to have a whole legislature at liberty to cut out offices for one another. He thought a self-denying ordinance for ourselves would be more proper. Bad as the Constitution has been made by expunging the restriction on the Senate concerning money bills, he did not wish to make it

worse by expunging the present section. He had scarcely seen a single corrupt measure in the legislature of North Carolina, which could not be traced up to office hunting.

Sherman: The Constitution should lay as few temptations as possible in the way of those in power. Men of abilities will increase as the country grows more populous and as the means of education are more diffused.

C. Pinckney: No state has rendered the members of the legislature ineligible to offices. In South Carolina the judges are eligible into the legislature. It cannot be supposed, then, that the motion will be offensive to the people. If the state constitution should be revised, he believed restrictions of this sort would be rather diminished than multiplied.

Wilson: Could not approve of the section as it stood, and could not give up his judgment to any supposed objections that might arise among the people. He considered himself as acting and responsible for the welfare of millions, not immediately represented in this House. He had also asked himself the serious question, what he should say to his constituents in case they should call upon him to tell them why he sacrificed his own judgment in a case where they authorized him to exercise it? Were he to own to them that he sacrificed it in order to flatter their prejudices, he should dread the retort—did you suppose the people of Pennsylvania had not good sense enough to receive a good government? Under this impression, he should certainly follow his own judgment, which disapproved of the section. He would remark, in addition to the objections urged against it, that as one branch of the legislature was to be appointed by the legislatures of the states, the other by the people of the states; as both are to be paid by the states, and to be appointable to state offices; nothing seemed to be wanting to prostrate the national legislature but to render its members ineligible to national offices, and by that means take away its power of attracting those talents which were necessary to give weight to the government, and to render it useful to the people. He was far from thinking the ambition which aspired to offices of dignity and trust an ignoble or culpable one. He



was sure it was not politic to regard it in that light, or to withhold from it the prospect of those rewards which might engage it in the career of public service. He observed that the state of Pennsylvania, which had gone as far as any state into the policy of fettering power, had not rendered the members of the legislature ineligible to offices of government.

Ellsworth: Did not think the mere postponement of the reward would be any material discouragement of merit. Ambitious minds will serve two years, or seven years in the legislature, for the sake of qualifying themselves for other offices. This he thought a sufficient security for obtaining the services of the ablest men in the legislature; although, whilst members, they should be ineligible to public offices. Besides, merit will be most encouraged when most impartially rewarded. If rewards are to circulate only within the legislature, merit out of it will be discouraged.

Mercer: Was extremely anxious on this point. What led to the appointment of this Convention? The corruption and mutability of the legislative councils of the states. If the plan does not remedy these, it will not recommend itself; and we shall not be able in our private capacities to support and enforce it: nor will the best part of our citizens exert themselves for the purpose. It is a great mistake to suppose that the paper we are to propose will govern the United States. It is the men whom it will bring into the government, and interest in maintaining it, that are to govern them. The paper will only mark out the mode and the form. Men are the substance and must do the business. All government must be by force or influence. It is not the King of France, but two hundred thousand janissaries of power that govern that kingdom. There will be no such force here; influence, then, must be substituted; and he would ask whether this could be done if the members of the legislature should be ineligible to offices of state; whether such a disqualification would not determine all the most influential men to stay at home and prefer appointments within their respective states.

Wilson: Was by no means satisfied with the answer given by

Mr. Ellsworth to the argument as to the discouragement of merit. The members must either go a second time into the legislature and disqualify themselves, or say to their constituents, we served you before only from the mercenary view of qualifying ourselves for offices, and having answered this purpose, we do not choose to be again elected.

G. Morris: Put the case of a war, and the citizen most capable of conducting it happening to be a member of the legislature. What might have been the consequence of such a regulation at the commencement, or even in the course, of the late contest for our liberties?

On the question for postponing, in order to take up C. Pinckney's motion, it was lost: Yeas 5 (New Hampshire, Pennsylvania, Delaware, Maryland, Virginia); nays 5 (Massachusetts, Connecticut, New Jersey, North Carolina, South Carolina); divided 1 (Georgia).

G. Morris: Moved to insert, after "office," "except offices in the army or navy: but, in that case, their offices shall be vacated."

Broom: Seconds him.

Randolph: Had been and should continue uniformly opposed to the striking out of the clause, as opening a door for influence and corruption. No arguments had made any impression on him, but those which related to the case of war and a coexisting incapacity of the fittest commanders to be employed. He admitted great weight in these, and would agree to the exception proposed by Mr. Gouverneur Morris.

Butler and C. Pinckney: Urged a general postponement of Article VI, Section 9, till it should be seen what powers would be vested in the Senate, when it would be more easy to judge of the expediency of allowing the officers of state to be chosen out of that body.

A general postponement was agreed to, *nem. con.*

Brearley: From the Committee of Unfinished Business, made the following partial report: "That in lieu of Article VI, Section 9, the words following be inserted, viz.: 'The members of each house shall be ineligible to any civil office under the authority of the United States, during the time for which they shall re-

Sept. 1

spectively be elected; and no person holding an office under the United States shall be a member of either House during his continuance in office.' "

Sept. 3

C. Pinckney: Motion: "The members of each house shall be incapable of holding any office under the United States for which they, or any other for their benefit, receive any salary, fees or emoluments of any kind; and the acceptance of such office shall vacate their seats respectively."

He was strenuously opposed to an ineligibility of members to office, and therefore wished to restrain the proposition to a mere incompatibility. He considered the eligibility of members of the legislature to the honorable offices of government, as resembling the policy of the Romans, in making the temple of virtue the road to the temple of fame.

On this question: Yeas 2 (Pennsylvania, North Carolina); nays 8 (New Hampshire, Massachusetts, Connecticut, New Jersey, Maryland, Virginia, South Carolina, Georgia).

King: Moved to insert the word "created" before the word "during" in the report of the committee. This, he said, would exclude the members of the first legislature under the Constitution, as most of the offices would then be created.

Williamson: Seconded the motion. He did not see why members of the legislature should be ineligible to *vacancies* happening during the term of their election.

Sherman: Was for entirely incapacitating members of the legislature. He thought their eligibility to offices would give too much influence to the executive. He said the incapacity ought at least to be extended to cases where salaries should be *increased*, as well as *created*, during the term of the member. He mentioned also the expedient by which the restriction could be evaded, to wit, an existing officer might be translated to an office created and a member of the legislature be then put into the office vacated.

G. Morris: Contended that the eligibility of members to office would lessen the influence of the executive. If they cannot be appointed themselves, the executive will appoint their relations and friends, retaining the service and votes of the mem-

bers for his purposes in the legislature. Whereas the appointment of the members deprives him of such an advantage.

Gerry: Thought the eligibility of members would have the effect of opening batteries against good officers, in order to drive them out and make way for members of the legislature.

Gorham: Was in favor of the amendment. Without it, we go further than has been done in any of the states, or indeed any other country. The experience of the state governments, where there was no such ineligibility, proved that it was not necessary; on the contrary, that the eligibility was among the inducements for fit men to enter into the legislative service.

Randolph: Was inflexibly fixed against inviting men into the legislature by the prospect of being appointed to offices.

Baldwin: Remarked that the example of the states was not applicable. The legislatures there are so numerous that an exclusion of their members would not leave proper men for offices. The case would be otherwise in the general government.

Mason: Instead of excluding merit, the ineligibility will keep out corruption by excluding office-hunters.

Wilson: Considered the exclusion of members of the legislature as increasing the influence of the executive, as observed by Mr. Gouverneur Morris; at the same time that it would diminish the general energy of the government. He said that the legal disqualification for office would be odious to those who did not wish for office, but did not wish either to be marked by so degrading a distinction.

C. Pinckney: The first legislature will be composed of the ablest men to be found. The states will select such to put the government into operation. Should the report of the Committee, or even the amendment be agreed to, the great offices, even those of the judiciary department, which are to continue for life, must be filled, while those most capable of filling them will be under a disqualification.

On the question of King's motion: Yeas 5 (New Hampshire, Massachusetts, Pennsylvania, Virginia, North Carolina); nays 5 (Connecticut, New Jersey, Maryland, South Carolina, Georgia).

Williamson: Moved to insert the words "created, or the emoluments whereof shall have been increased" before the word "during" in the report of the committee.

King: Seconded the motion, and on the question: Yeas 5 (New Hampshire, Massachusetts, Pennsylvania, Virginia, North Carolina); nays 4 (Connecticut, New Jersey, Maryland, South Carolina); divided 1 (Georgia).

The last clause, rendering a seat in the legislature and an office incompatible, was agreed to, *nem. con.*

The report, as amended and agreed to, is as follows: "The members of each house shall be ineligible to any civil office under the authority of the United States, created, or the emoluments whereof shall have been increased, during the time for which they shall respectively be elected. And no person holding any office under the United States shall be a member of either house during his continuance in office."

Sept. 12 **Conclusions in Convention.** No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office. Article I, Section 6, paragraph 2. Report of Committee on Style and Arrangement.

Sept. 14 Baldwin: Observed that the clause, Article I, Section 6, declaring that no member of Congress, "during the time for which he was elected, shall be appointed to any civil office under the authority of the United States which shall have been created, or the emoluments whereof shall have been increased, during such time," would not extend to offices *created by the Constitution*; and the salaries of which would be created, *not increased*, by Congress at their first session. The members of the first Congress consequently might evade the disqualification in this instance. He was neither seconded nor opposed, nor did anything further pass on the subject.

Sept. 17 This recommendation (Article I, Section 6, paragraph 2) of the

Committee on Style and Arrangement was included in the final draft of the Constitution.

## IMPEACHMENT

**Preliminaries in Committee of the Whole.** Dickinson: Moved *June 2*

“that the executive be made removable by national legislature, on the request of a majority of the legislatures of individual states.” It was necessary, he said, to place the power of removing somewhere. He did not like the plan of impeaching the great officers of state. He did not know how provision could be made for removal of them in a better mode than that which he had proposed. He had no idea of abolishing the state governments, as some gentlemen seemed inclined to do. The happiness of this country, in his opinion, required considerable powers to be left in the hands of the states.

Bedford: Seconded the motion.

Sherman: Contended that the national legislature should have power to remove the executive at pleasure.

Mason: Some mode of displacing an unfit magistrate is rendered indispensable by the fallibility of those who choose, as well as by the corruptibility of the man chosen. He opposed decidedly the making the executive the mere creature of the legislature, as a violation of the fundamental principle of good government.

Madison and Wilson: Observed that it would leave an equality of agency in the small with the great states; that it would enable a minority of the people to prevent the removal of an officer who had rendered himself justly criminal in the eyes of a majority; that it would open a door for intrigues against him in states where his administration, though just, might be unpopular; and might tempt him to pay court to particular states whose leading partisans he might fear, or wish to engage as his partisans. They both thought it bad policy to introduce such a mixture of the state authorities, where their agency could be otherwise supplied.

Dickinson: Considered the business as so important that no man ought to be silent or reserved. He went into a discourse of

some length, the sum of which was that the legislative, executive, and judiciary departments ought to be made as independent as possible; but that such an executive as some seemed to have in contemplation was not consistent with a republic; that a firm executive could only exist in a limited monarchy. In the British government itself the weight of the executive arises from the attachments which the Crown draws to itself, and not merely from the force of its prerogatives. In place of these attachments we must look out for something else. One source of stability is the double branch of the legislature. The division of the country into distinct states formed the other principal source of stability. This division ought therefore to be maintained, and considerable powers to be left with the states. This was the ground of his consolation for the future fate of his country. Without this, and in case of a consolidation of the states into one great republic, we might read its fate in the history of smaller ones. A limited monarchy he considered as *one* of the best governments in the world. It was not *certain* that the same blessings were derivable from any other form. It was certain that equal blessings had never yet been derived from any of the republican forms. A limited monarchy, however, was out of the question. The spirit of the times, the state of affairs forbade the experiment, if it were desirable. Was it possible, moreover, in the nature of things, to introduce it even if these obstacles were less insuperable? A house of nobles was essential to such a government—could these be created by a breach, or by a stroke of the pen? No. They were the growth of ages and could only arise under a complication of circumstances none of which existed in this country. But though a form the most perfect, *perhaps*, in itself, be unattainable, we must not despair. If ancient republics have been found to flourish for a moment only, and then vanish forever, it only proves that they were badly constituted; and that we ought to seek for every remedy for their diseases. One of these remedies he conceived to be the accidental lucky division of this country into distinct states; a division which some seemed desirous to abolish altogether.

As to the point of representation in the national legislature, as it might affect states of different sizes, he said it must probably end in mutual concession. He hoped that each state would retain an equal voice at least in one branch of the national legislature, and supposed the sums paid within each state would form a better ratio for the other branch than either the number of inhabitants or the quantum of property. A motion being made to strike out "on request by a majority of the legislatures of the individual states," and rejected (Connecticut, South Carolina, and Georgia being yea, the rest nay), the question was taken on Dickinson's motion "for making the executive removable by the national legislature at the request of a majority of state legislatures," which was also rejected, all the states being in the negative, except Delaware, which gave an affirmative vote.

Williamson and Davie: Moved to add to the last clause the words, "and to be removable on impeachment and conviction of malpractice or neglect of duty"; which was agreed to.

**Fundamentals in Convention.** Resolved, that a national executive be instituted . . . to be removable on impeachment and conviction of malpractices or neglect of duty. . . ." Ninth resolution, Committee of the Whole.

*June 19*

On the clause, "to be removable on impeachment and conviction for malpractice or neglect of duty":

*July 20*

C. Pinckney and G. Morris: Moved to strike out this part of the resolution. Pinckney observed he ought not to be impeachable whilst in office.

Davie: If he be not impeachable whilst in office, he will spare no efforts or means whatever to get himself re-elected. He considered this as an essential security for the good behavior of the executive.

Wilson: Concurred in the necessity of making the executive impeachable whilst in office.

G. Morris: He could do no criminal act without coadjutors, who may be punished. In case he should be re-elected, that will be a sufficient proof of his innocence. Besides, who is to impeach?



Is the impeachment to suspend his functions? If it is not, the mischief will go on. If it is, the impeachment will be nearly equivalent to a displacement; and will render the executive dependent on those who are to impeach.

Mason: No point is of more importance than that the right of impeachment should be continued. Shall any man be above justice? Above all, shall that man be above it who can commit the most extensive injustice? When great crimes were committed, he was for punishing the principal as well as the coadjutors. There had been much debate and difficulty as to the mode of choosing the executive. He approved of that which had been adopted at first, namely, of referring the appointment to the national legislature. One objection against electors was the danger of their being corrupted by the candidates, and this furnished a peculiar reason in favor of impeachments whilst in office. Shall the man who has practiced corruption, and by that means procured his appointment in the first instance, be suffered to escape punishment by repeating his guilt?

Franklin: Was for retaining the clause as favorable to the executive. History furnishes one example only of a first magistrate being formally brought to public justice. Every body cried out against this as unconstitutional. What was the practice before this, in cases where the chief magistrate rendered himself obnoxious? Why, recourse was had to assassination, in which he was not only deprived of his life but of the opportunity of vindicating his character. It would be the best way, therefore, to provide in the Constitution for the regular punishment of the executive, where his misconduct should deserve it, and for his honorable acquittal, where he should be unjustly accused.

G. Morris: Admits corruption, and some few other offenses, to be such as ought to be impeachable; but thought the cases ought to be enumerated and defined.

Madison: Thought it indispensable that some provision should be made for defending the community against the incapacity, negligence, or perfidy of the chief magistrate. The limitation

of the period of his service was not a sufficient security. He might lose his capacity after his appointment. He might pervert his administration into a scheme of speculation or oppression. He might betray his trust to foreign powers. The case of the executive magistracy was very distinguishable from that of the legislature, or any other public body, holding offices of limited duration. It could not be presumed that all, or even the majority, of the members of an assembly would either lose their capacity for discharging, or be bribed to betray, their trust. Besides, the restraints of their personal integrity and honor, the difficulty of acting in concert for purposes of corruption was a security to the public. And if one or a few members only should be seduced, the soundness of the remaining members would maintain the integrity and fidelity of the body. In the case of the executive magistracy, which was to be administered by a single man, loss of capacity or corruption was more within the compass of probable events, and either of them might be fatal to the republic.

C. Pinckney: Did not see the necessity of impeachments. He was sure they ought not to issue from the legislature, who would in that case hold them as a rod over the executive, and by that means effectually destroy his independence. His revisionary power in particular would be rendered altogether insignificant.

Gerry: Urged the necessity of impeachments. A good magistrate will not fear them. A bad one ought to be kept in fear of them. He hoped the maxim would never be adopted here that the chief magistrate could do no wrong.

King: Expressed his apprehensions that an extreme caution in favor of liberty might enervate the government we were forming. He wished the House to recur to the primitive axiom that the three great departments of government should be separate and independent; that the executive and judiciary should be so as well as the legislative; that the executive should be so equally with the judiciary. Would this be the case if the executive should be impeachable? It had been said that the judiciary would be impeachable. But it should have been remembered,

at the same time, that the judiciary hold their places not for a limited time, but during good behavior. It is necessary, therefore, that a form should be established for trying misbehavior. Was the executive to hold his place during good behavior? The executive was to hold his place for a limited time, like the members of the legislature. Like them, particularly the Senate, whose members would continue in appointment the same term of six years, he would periodically be tried for his behavior by his electors, who would continue or discontinue him in trust according to the manner in which he had discharged it. Like them, therefore, he ought to be subject to no intermediate trial by impeachment. He ought not to be impeachable unless he held his office during good behavior, a tenure which would be most agreeable to him, provided an independent and effectual forum could be devised. But under no circumstances ought he to be impeachable by the legislature. This would be destructive of his independence, and of the principles of the Constitution. He relied on the vigor of the executive as a great security for the public liberties.

Randolph: The propriety of impeachments was a favorite principle with him. Guilt, wherever found, ought to be punished. The executive will have great opportunities of abusing his powers; particularly in time of war, when the military force, and in some respects the public money, will be in his hands. Should no regular punishment be provided, it will be irregularly inflicted by tumults and insurrections. He is aware of the necessity of proceeding with a cautious hand, and of excluding as much as possible the influence of the legislature from the business. He suggested for consideration an idea which had fallen (from Col. Hamilton) of composing a forum out of the judges belonging to the states; and even of requiring some preliminary inquest, whether just ground of impeachment existed.

Franklin: Mentioned the case of the Prince of Orange, during the late war. An arrangement was made between France and Holland, by which their two fleets were to unite at a certain time and place. The Dutch fleet did not appear. Everybody

began to wonder at it. At length it was suspected that the stadtholder was at the bottom of the matter. This suspicion prevailed more and more. Yet as he could not be impeached, and no regular examination took place, he remained in his office; and strengthening his own party, as the party opposed to him became formidable, he gave birth to the most violent animosities and contentions. Had he been impeachable, a regular and peaceable inquiry would have taken place, and he would, if guilty, have been duly punished; if innocent, restored to the confidence of the public.

King: Remarked that the case of the stadtholder was not applicable. He held his place for life, and was not periodically elected. In the former case, impeachments are proper to secure good behavior. In the latter, they are unnecessary; the periodical responsibility to the electors being an equivalent security.

Wilson: Observed that if the idea were to be pursued, the senators who are to hold their places during the same term with the executive ought to be subject to impeachment and removal.

C. Pinckney: Apprehended that some gentlemen reasoned on a supposition that the executive was to have powers which would not be committed to him. He presumed that his powers would be so circumscribed as to render impeachments unnecessary.

G. Morris: His opinion had been changed by the arguments used in the discussion. He was not sensible of the necessity of impeachments, if the executive was to continue for any length of time in office. Our executive was not like a magistrate having a life interest, much less like one having an hereditary interest, in his office. He may be bribed by a greater interest to betray his trust; and no one would say that we ought to expose ourselves to the danger of seeing the first magistrate in foreign pay, without being able to guard against it by displacing him. One would think the king of England well secured against bribery. He has, as it were, a fee simple in the whole kingdom. Yet Charles II was bribed by Louis XIV. The ex-

ecutive ought, therefore, to be impeachable for treachery. Corrupting his electors and incapacity were other causes of impeachment. For the latter he should be punished, not as a man, but as an officer, and punished only by degradation from his office. This magistrate is not the king, but the prime minister. The people are the king. When we make him amenable to justice, however, we should take care to provide some mode that will not make him dependent on the legislature.

It was moved and seconded to postpone the question of impeachments, etc., which was negatived, Massachusetts and South Carolina only being yea.

On the question, "Shall the executive be removable on impeachments, etc.": Yeas 8 (Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Georgia); nays 2 (Massachusetts, South Carolina).

- July 26*    **Agreements Referred to Committee of Detail.** Resolved, that a national executive be instituted, to consist of a single person; . . . to be removable on impeachment, and conviction of malpractice or neglect of duty. . . . Twelfth resolution on fundamentals.
- Aug. 6*    **Details in Convention.** . . . He shall be removed from his office on impeachment by the House of Representatives, and conviction in the Supreme Court, of treason, bribery, or corruption. . . . Article X, Section 2, Committee of Detail.
- Aug. 20*    **G. Morris and C. Pinckney:** Submitted propositions to establish a Council of State, ending with the following paragraph: "Each of the officers above mentioned shall be liable to impeachment and removal from office, for neglect of duty, malversation, or corruption."
- Aug. 22*    At the end of the second section of the eleventh article add, "the judges of the Supreme Court shall be triable by the Senate, on impeachment by the House of Representatives." Supplementary report of the Committee of Detail.
- Aug. 27*    The clause for removing the President, on impeachment by the House of Representatives, and conviction in the Supreme

Court, of treason, bribery, or corruption, was postponed, *nem. con.*, at the instance of G. Morris, who thought the tribunal an improper one, particularly if the first judge was to be of the Privy Council.

Brearley: For the Committee on Unfinished Business, recommended that Article X, Section 2, Report of Committee of Detail, be changed to read as follows: "He [the President] shall be removed from his office on impeachment by the House of Representatives, and conviction by the Senate, for treason or bribery." Sept. 4

The clause referring to the Senate the trial of impeachment against the President, for treason and bribery, was taken up. Sept. 8  
Mason: Why is the provision restrained to treason and bribery only? Treason, as defined in the Constitution, will not reach many great and dangerous offenses. Hastings is not guilty of treason. Attempts to subvert the Constitution may not be treason, as above defined. As bills of attainder, which have saved the British constitution, are forbidden, it is the more necessary to extend the power of impeachments. He moved to add, after "bribery," "or maladministration."

Gerry: Seconded him.

Madison: So vague a term will be equivalent to a tenure during pleasure of the Senate.

G. Morris: It will not be put in force and can do no harm. An election of every four years will prevent maladministration.

Mason: Withdrew "maladministration" and substituted "other high crimes and misdemeanors against the state."

On the question thus altered: Yeas 8 (New Hampshire, Massachusetts, Connecticut, Maryland, Virginia, North Carolina, South Carolina, Georgia); nays 3 (New Jersey, Pennsylvania, Delaware).

Madison: Objected to a trial of the President by the Senate, especially as he was to be impeached by the other branch of the legislature; and for any act which might be called a misdemeanor. The President under these circumstances was made improperly dependent. He would prefer the Supreme Court

for the trial of impeachments; or rather, a tribunal of which that should form a part.

G. Morris: Thought no other tribunal than the Senate could be trusted. The Supreme Court were too few in number, and might be warped or corrupted. He was against a dependence of the executive on the legislature, considering the legislative tyranny the great danger to be apprehended; but there could be no danger that the Senate would say untruly, on their oaths, that the President was guilty of crimes or facts, especially as in four years he can be turned out.

C. Pinckney: Disapproved of making the Senate the court of impeachments, as rendering the President too dependent on the legislature. If he opposes a favorite law, the two houses will combine against him, and under the influence of heat and faction throw him out of office.

Williamson: Thought there was more danger of too much lenity than of too much rigor towards the President, considering the number of cases in which the Senate was associated with the President.

Sherman: Regarded the Supreme Court as improper to try the President because the judges would be appointed by him.

On the motion by Madison to strike out the words "by the Senate" after the word "conviction": Yeas 2 (Pennsylvania, Virginia); nays 9 (New Hampshire, Massachusetts, Connecticut, New Jersey, Delaware, Maryland, North Carolina, South Carolina, Georgia).

In the amendment of Mason just agreed to, the word "state" after the words "misdemeanors against" was struck out, and the words "United States" unanimously inserted in order to remove ambiguity.

On the question to agree to the clause, as amended: Yeas 10 (New Hampshire, Massachusetts, Connecticut, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia); nays 1 (Pennsylvania).

On motion, the following was added to the clause on the subject of impeachments: "The Vice President and other civil

officers of the United States shall be removed from office on impeachment and conviction, as aforesaid."

**Conclusions in Convention.** The President, Vice President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors. Article II, Section 4. Report of Committee on Style and Arrangement. *Sept. 12*

The completed Constitution, approved this day, included the provision for impeachment recommended by the Committee on Style and Arrangement. *Sept. 17*

#### HONORS AND EMOLUMENTS

**Details in Convention.** C. Pinckney: Urged the necessity of preserving foreign ministers, and other officers of the United States, independent of external influence; and moved to insert after Article VII, Section 7, the clause following: "No person holding any office of trust or profit under the United States shall, without the consent of the legislature, accept of any present, emolument, office or title of any kind whatever, from any king, prince, or foreign state"; which passed, *nem. con.* *Aug. 23*

**Conclusions in Convention.** . . . No person holding any office of profit or trust under them [the United States] shall, without the consent of the Congress, accept of any present, emolument, office or title, of any kind whatever from any king, prince, or foreign state. Article I, Section 9, paragraph 7. Report of Committee on Style and Arrangement. *Sept. 12*

This recommendation of the committee became a part of the completed Constitution approved this day. *Sept. 17*

#### REMOVAL OF ADMINISTRATIVE OFFICIALS

**Fundamentals in Convention.** Resolved, that a national executive be instituted . . . with power . . . to appoint to offices in cases not otherwise provided for. . . . Ninth resolution, Committee of the Whole. *June 19*



- July 17* The recommendation of the Committee of the Whole, viz., that the executive be empowered to appoint to offices in cases not otherwise provided for, was agreed to, *nem. con.*
- July 26* **Agreement Referred to Committee of Detail.** The Convention referred to Committee of Detail its agreement on the appointive power of the executive, to wit: Resolved, that a national executive be instituted . . . with power . . . to appoint to offices in cases not otherwise provided for. . . Twelfth resolution on fundamentals.
- Aug. 6* **Details in Convention.** He [the President] shall commission all the officers of the United States; and shall appoint officers in all cases not otherwise provided for by this Constitution. Article X, Section 2, Committee of Detail.
- Judgment, in cases of impeachment, shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit, under the United States. But the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment according to law. Article XI, Section 5, Committee of Detail.
- Aug. 24* Sherman: Objected to the sentence, "and shall appoint officers in all cases not otherwise provided for in this Constitution." He admitted it to be proper that many officers in the executive department should be so appointed; but contended that many ought not—as general officers in the army, in time of peace, etc. Herein lay the corruption in Great Britain. If the executive can model the army, he may set up an absolute government; taking advantage of the close of a war, and an army commanded by his creatures. James II was not obeyed by his officers, because they had been appointed by his predecessors, not by himself. He moved to insert "or by law" after the word "Constitution."
- On motion of Madison, "officers" was struck out, and "to offices" inserted, in order to obviate doubts that he might appoint officers without a previous creation of the offices by the legislature.

On the question for inserting "or by law," as moved by Sherman: Yeas 1 (Connecticut); nays 9 (New Hampshire, Massachusetts, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, South Carolina, Georgia); North Carolina absent.

Dickinson: Moved to strike out the words, "and shall appoint to offices in all cases not otherwise provided for by this Constitution," and insert, "and shall appoint to all offices established by this Constitution, except in cases herein otherwise provided for; and to all offices which may hereafter be created by law."

Randolph: Observed that the power of appointments was a formidable one both in the executive and legislative hands; and suggested whether the legislature should not be left at liberty to refer appointments, in some cases, to some state authority.

Dickinson's motion passed in the affirmative: Yeas 6 (Connecticut, New Jersey, Pennsylvania, Maryland, Virginia, Georgia); nays 4 (New Hampshire, Massachusetts, Delaware, South Carolina); North Carolina absent.

Dickinson: Then moved to annex to his last amendment, "except where by law the appointment shall be vested in the legislature or executives of the several states."

Randolph: Seconded the motion.

Wilson: If this be agreed to, it will soon be a standing instruction to the state legislatures to pass no law creating offices, unless the appointment be referred to them.

Sherman: Objected to "legislatures" in the motion, which was struck out by consent of the movers.

G. Morris: This would be putting it in the power of the states to say, "you shall be viceroys, but we will be viceroys over you."

The motion was negived without a count of the states.

Article XI, Section 5, was agreed to, *nem. con.*

*Aug. 28*

Brearley: For the Committee on Unfinished Business, recommended the following: The President . . . shall nominate, and, by and with the advice and consent of the Senate, shall

*Sept. 4*

appoint ambassadors, and other public ministers, judges of the Supreme Court, and all other officers of the United States whose appointments are not otherwise herein provided for.  
. . . Seventh resolution.

- Sept. 7*     Wilson: Objected to the mode of appointing, as blending a branch of the legislature with the executive. Good laws are of no effect without a good executive, and there can be no good executive without a responsible appointment of officers to execute. Responsibility is in a manner destroyed by such an agency of the Senate. He would prefer the council proposed by Col. Mason; provided its advice should not be made obligatory on the President.
- C. Pinckney: Was against joining the Senate in these appointments, except in the instances of ambassadors, who he thought ought not to be appointed by the President.
- G. Morris: Said that as the President was to nominate, there would be responsibility; and as the Senate was to concur, there would be security. As Congress now make appointments, there is no responsibility.
- Gerry: The idea of responsibility in the nomination to offices is chimerical. The President cannot know all characters, and can therefore always plead ignorance.
- King: As the idea of a council, proposed by Col. Mason, has been supported by Mr. Wilson, he would remark that most of the inconveniences charged on the Senate are incident to a council of advice. He differed from those who thought the Senate would sit constantly. He did not suppose it was meant that all the minute officers were to be appointed by the Senate, or any other original source, but by the higher officers of the departments to which they belong. He was of opinion also that the people would be alarmed at an unnecessary creation of new corps, which must increase the expense as well as influence of the government.
- On the question on these words in the clause, viz.: "He shall nominate, and, by and with the advice and consent of the Senate, shall appoint ambassadors and other public ministers and consuls, and judges of the Supreme Court," it was agreed

to, *nem. con.*, the insertion of "and consuls" having first taken place.

On the question on the following words: "and all other officers of the United States": Yeas 9 (New Hampshire, Massachusetts, Connecticut, New Jersey, Delaware, Maryland, Virginia, North Carolina, Georgia); nays 2 (Pennsylvania, South Carolina).

On motion of Spaight that "the President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of the next session of the Senate," it was agreed to, *nem. con.*

**Conclusions in Convention.** He [the President] shall . . . nominate, and, by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls . . . and all other officers of the United States whose appointments are not herein otherwise provided for. Article II, Section 2, paragraph 2. Report of Committee on Style and Arrangement. *Sept. 12*

The final draft of the Constitution, approved this day, contained the following provisions for appointments: He [the President] shall . . . nominate, and, by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law. . . . Article II, Section 2, paragraph 2.<sup>1</sup> *Sept. 17*

#### JUDICIAL EXPLICATIONS

Knowlton v. Moore, 178 U.S. 41 (1900)

Ex parte Milligan, 4 Wall. 2 (1866)

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<sup>1</sup> [In *Myers v. United States*, 272 U.S. 52 (1926), the Supreme Court decided that the President's removal power is implied in the grant of executive power, and in the injunction that he "shall take care that the laws be faithfully executed."

In *Rathbun v. United States*, 295 U.S. 602 (1935), that court decided that the removal power did not extend to organs predominantly quasi-judicial and quasi-

Ex parte Garland, 4 Wall. 333 (1867)

Calder v. Bull, 3 Dall. 386 (1798)

Thompson v. Utah, 170 U.S. 343 (1898)

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legislative in character. These decisions sustain the President's removal power as a restraint on administrative officers.]

## CHAPTER 20

### DISTINCTIVE AMERICAN ADAPTATIONS

#### THE PREAMBLE

**Details in Convention.** We the people of the states of New Hampshire, Massachusetts, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, do ordain, declare, and establish the following Constitution for the government of ourselves and our posterity. The Preamble, Committee of Detail. *Aug. 6*

The style of the government shall be, "The United States of America." Article I, Committee of Detail.

The Preamble of the report was agreed to, *nem. con.* So was Article I. *Aug. 7*

**Conclusions in Convention.** We the people of the United States, in order to form a more perfect union, to establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America. The Preamble. Report of Committee on Style and Arrangement. *Sept. 12*

Preamble recommended by the Committee on Style and Arrangement became a part of the completed Constitution. *Sept. 17*

#### COMPLETION OF DRAFTING PROCESSES

On the question to agree to the Constitution, as amended, all the states, aye. *Sept. 15*

The Constitution was then ordered to be engrossed, and the House adjourned.

ACTION ON ENGROSSED CONSTITUTION

Sept. 17 Franklin: Mr. President: I confess that there are several parts of this Constitution which I do not at present approve, but I am not sure I shall never approve them. For having lived long, I have experienced many instances of being obliged by better information, or fuller consideration, to change opinions even on important subjects, which I once thought right, but found to be otherwise. It is therefore that the older I grow, the more apt I am to doubt my own judgment, and to pay more respect to the judgment of others. Most men, indeed, as well as most sects in religion, think themselves in possession of all truth, and that wherever others differ from them, it is so far error. Steele, a Protestant, in a dedication, tells the Pope that the only difference between our churches, in their opinions of the certainty of their doctrines, is, "the Church of Rome is infallible, and the Church of England is never in the wrong." But though many private persons think almost as highly of their own infallibility as of that of their sect, few express it so naturally as a certain French lady, who, in a dispute with her sister, said, "I don't know how it happens, sister, but I meet with nobody but myself that is always in the right—*il n'y a que moi qui a toujours raison.*"

In these sentiments, sir, I agree to this Constitution, with all its faults, if they are such; because I think a general government necessary for us, and there is no form of government but what may be a blessing to the people if well administered; and believe further that this is likely to be well administered for a course of years, and can only end in despotism, as other forms have done before it, when the people shall become so corrupted as to need despotic government, being incapable of any other. I doubt, too, whether any other convention we can obtain may be able to make a better constitution. For when you assemble a number of men to have the advantage of their joint wisdom, you inevitably assemble with those men

all their prejudices, their passions, their errors of opinion, their local interests and their selfish views. From such an assembly can a perfect production be expected? It therefore astonishes me, sir, to find this system approaching so near to perfection as it does; and I think it will astonish our enemies, who are waiting with confidence to hear that our councils are confounded, like those of the builders of Babel; and that our states are on the point of separation, only to meet hereafter for the purpose of cutting one another's throats. Thus I consent, sir, to this Constitution, because I expect no better and because I am not sure that it is not the best. The opinions I have had of its errors I sacrifice to the public good. I have never whispered a syllable of them abroad. Within these walls they were born, and here they shall die. If every one of us, in returning to our constituents, were to report the objections he has had to it, and endeavor to gain partisans in support of them, we might prevent its being generally received, and thereby lose all the salutary effects and great advantages resulting naturally in our favor among foreign nations as well as among ourselves, from our real or apparent unanimity. Much of the strength and efficiency of any government, in procuring and securing happiness to the people, depends on opinion—on the general opinion of the goodness of the government as well as of the wisdom and integrity of its governors. I hope, therefore, that for our own sakes, as a part of the people, and for the sake of posterity, we shall act heartily and unanimously in recommending this Constitution (if approved by Congress and confirmed by the conventions) wherever our influence may extend, and turn our future thoughts and endeavors to the means of having it well administered.

On the whole, sir, I cannot help expressing a wish that every member of the Convention who may still have objections to it, would with me, on this occasion, doubt a little of his own infallibility, and to make manifest our unanimity, put his name to this instrument.

He [Franklin] then moved that the Constitution be signed by the members, and offered the following as a convenient form,



viz.: "Done in Convention by the unanimous consent of *the states* present, the seventeenth of September, etc. In witness whereof we have hereunto subscribed our names."

This ambiguous form had been drawn up by Mr. G. Morris in order to gain the dissenting members, and put into the hands of Dr. Franklin that it might have the better chance of success. On the question to agree to the Constitution, enrolled, in order to be signed, it was agreed to, all the *states* answering aye.

Randolph: Then rose, and with an allusion to the observations of Dr. Franklin, apologized for his refusing to sign the Constitution, notwithstanding the vast majority and venerable names that would give sanction to its wisdom and its worth. He said, however, that he did not mean by this refusal to decide that he should oppose the Constitution without doors. He meant only to keep himself free to be governed by his duty, as it should be prescribed by his future judgment. He refused to sign, because he thought the object of the Convention would be frustrated by the alternative which it presented to the people. Nine states will fail to ratify the plan, and confusion must ensue. With such a view of the subject he ought not, he could not, by pledging himself to support the plan, restrain himself from taking such steps as might appear to him most consistent with the public good.

G. Morris: Said that he too had objections, but considering the present plan as the best that was to be attained, he should take it with all its faults. The majority had determined in its favor, and by that determination he should abide. The moment this plan goes forth, all other considerations will be laid aside, and the great question will be, shall there be a national government or not? and this must take place, or a general anarchy will be the alternative. He remarked that the signing, in the form proposed, related only to the fact that *the states* present were unanimous.

Williamson: Suggested that the signing should be confined to the letter accompanying the Constitution to Congress, which might perhaps do nearly as well, and would be found satis-

factory to some members <sup>1</sup> who disliked the Constitution. For himself, he did not think a better plan was to be expected, and had no scruples against putting his name to it.

Hamilton: Expressed his anxiety that every member should sign.

A few characters of consequence, by opposing, or even refusing to sign the Constitution, might do infinite mischief, by kindling the latent sparks that lurk under an enthusiasm in favor of the Convention which may soon subside. No man's ideas were more remote from the plan than his own were known to be; but is it possible to deliberate between anarchy and convulsion on one side, and the chance of good to be expected from the plan on the other?

Blount: Said he had declared that he would not sign so as to pledge himself in support of the plan, but he was relieved by the form proposed, and would, without committing himself, attest the fact that the plan was the unanimous act of the states in Convention.

Franklin: Expressed his fears, from what Mr. Randolph had said, that he thought himself alluded to in the remarks offered this morning to the House. He declared that, when drawing up that paper, he did not know that any particular member would refuse to sign his name to the instrument, and hoped to be so understood. He possessed a high sense of obligation to Mr. Randolph for having brought forward the plan in the first instance and for the assistance he had given in its progress; and hoped that he would yet lay aside his objections, and, by concurring with his brethren, prevent the great mischief which the refusal of his name might produce.

Randolph: Could not but regard the signing in the proposed form as the same with signing the Constitution. The change of form, therefore, could make no difference with him. He repeated that, in refusing to sign the Constitution, he took a step which might be the most awful of his life; but it was dictated by his conscience, and it was not possible for him to

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<sup>1</sup> He alluded to Mr. Blount for one.

hesitate—much less, to change. He repeated, also, his persuasion, that the holding out this plan, with a final alternative to the people of accepting or rejecting it *in toto*, would really produce the anarchy and civil convulsions which were apprehended from the refusals of individuals to sign it.

Gerry: Described the painful feelings of his situation, and the embarrassments under which he rose to offer any further observations on the subject which had been finally decided. Whilst the plan was depending, he had treated it with all the freedom he thought it deserved. He now felt himself bound, as he was disposed, to treat it with the respect due to the act of the Convention. He hoped he should not violate that respect in declaring, on this occasion, his fears that a civil war may result from the present crisis of the United States. In Massachusetts, particularly, he saw the danger of this calamitous event. In that state there are two parties, one devoted to democracy, the worst, he thought, of all political evils; the other as violent in the opposite extreme. From the collision of these in opposing and resisting the Constitution, confusion was greatly to be feared. He had thought it necessary, for this and other reasons, that the plan should have been proposed in a more mediating shape, in order to abate the heat and opposition of parties. As it had been passed by the Convention, he was persuaded it would have a contrary effect. He could not, therefore, by signing the Constitution, pledge himself to abide by it at all events. The proposed form made no difference with him. But if it were not otherwise apparent, the refusals to sign should never be known from him. Alluding to the remarks of Dr. Franklin, he could not, he said, but view them as leveled at himself and the other gentlemen who meant not to sign.

C. C. Pinckney: We are not likely to gain many converts by the ambiguity of the proposed form of signing. He thought it best to be candid, and let the form speak the substance. If the meaning of the signers be left in doubt, his purpose would not be answered. He should sign the constitution with a view to

support it with all his influence, and wished to pledge himself accordingly.

Franklin: It is too soon to pledge ourselves, before Congress and our constituents shall have approved the plan.

Ingersoll: Did not consider the signing either as a mere attestation of the fact, or as pledging the signers to support the Constitution at all events; but as a recommendation of what, all things considered, was the most eligible.

On the motion of Franklin: Yeas 10 (New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Georgia); divided 1 (South Carolina).

King: Suggested that the journals of the Convention should either be destroyed or deposited in the custody of the President. He thought, if suffered to be made public, a bad use would be made of them by those who would wish to prevent the adoption of the Constitution.

Wilson: Preferred the second expedient. He had at one time liked the first best; but as false suggestions may be propagated, it should not be made impossible to contradict them.

A question was then put on depositing the journals and other papers of the Convention in the hands of the President, on which: Yeas 10 (New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia); nays 1 (Maryland).

The President having asked what the Convention meant should be done with the journals, etc., whether copies were to be allowed to the members, if applied for, it was resolved, *nem. con.*, "that he retain the journal and other papers, subject to the order of Congress, if ever formed under the Constitution."

The members then proceeded to sign the Constitution, as finally amended:

. . . .

Done in Convention, by the unanimous consent of the states present, the 17th day of September, in the year of our Lord

1787, and of the independence of the United States of America, the twelfth. In witness whereof, we have hereunto subscribed our names.

George Washington, *President,*  
and *Deputy from Virginia.*

*New Hampshire.*

John Langdon,  
Nicholas Gilman.

*Massachusetts.*

Nathaniel Gorham,  
Rufus King.

*Connecticut.*

William Samuel Johnson,  
Roger Sherman.

*New York.*

Alexander Hamilton.

*New Jersey.*

William Livingston,  
David Brearley,  
William Paterson,  
Jonathan Dayton.

*Pennsylvania.*

Benjamin Franklin,  
Thomas Mifflin,  
Robert Morris,  
George Clymer,  
Thomas Fitzsimons,  
Jared Ingersoll,  
James Wilson,  
Gouverneur Morris.

Attest:

William Jackson, *Secretary.*

The Constitution being signed by all the members except Randolph, Mason, and Gerry, who declined giving it the sanction

*Delaware.*

George Read,  
Gunning Bedford, Jr.,  
John Dickinson,  
Richard Bassett,  
Jacob Broome.

*Maryland.*

James McHenry,  
Daniel of St. Thomas Jenifer,  
Daniel Carroll.

*Virginia.*

John Blair,  
James Madison, Jr.

*North Carolina.*

William Blount,  
Richard Dobbs Spaight,  
Hugh Williamson.

*South Carolina.*

John Rutledge,  
Charles Cotesworth Pinckney,  
Charles Pinckney,  
Pierce Butler.

*Georgia.*

William Few,  
Abraham Baldwin.

of their names, the Convention dissolved itself by an adjournment sine die.

Whilst the last members were signing, Franklin, looking towards the president's chair, at the back of which a rising sun happened to be painted, observed to a few members near him that painters had found it difficult to distinguish in their art, a rising from a setting sun. I have, said he, often and often, in the course of the session, and the vicissitudes of my hopes and fears as to its issue, looked at that behind the president, without being able to tell whether it was rising or setting; but now at length, I have the happiness to know that it is a rising and not a setting sun.

LETTER TRANSMITTING THE COMPLETED CONSTITUTION  
TO THE UNITED STATES, IN CONGRESS ASSEMBLED

"We have now the honor to submit to the consideration of the United States, in Congress assembled, that Constitution which has appeared to us the most advisable.

"The friends of our country have long seen and desired that the power of making war, peace, and treaties; that of levying money, and regulating commerce, and the correspondent executive and judicial authorities, should be fully and effectually vested in the general government of the Union. But the impropriety of delegating such extensive trust to one body of men is evident. Hence results the necessity of a different organization.

"It is obviously impracticable, in the federal government of these states, to secure all rights of independent sovereignty to each, and yet provide for the interest and safety of all. Individuals entering into society must give up a share of liberty to preserve the rest. The magnitude of the sacrifice must depend as well on situation and circumstance as on the object to be obtained. It is at all times difficult to draw with precision the line between those rights which must be surrendered and those which may be reserved. And on the present occasion this difficulty was encreased by a difference among the several states as to their situation, extent, habits, and particular interests.

"In all our deliberations on this subject, we kept steadily in our view that which appears to us the greatest interest of every true American, the consolidation of our Union, in which is involved our prosperity, felicity, safety, perhaps our national existence. This important consideration, seriously and deeply impressed on our minds, led each state in the Convention to be less rigid on points of inferior magnitude than might have been otherwise expected. And thus the Constitution which we now present is the result of a spirit of amity, and of that mutual deference and concession which the peculiarity of our political situation rendered indispensable.

"That it will meet the full and entire approbation of every state is not, perhaps, to be expected. But each will doubtless consider that had her interest alone been consulted, the consequences might have been particularly disagreeable and injurious to others. That it is liable to as few exceptions as could reasonably have been expected, we hope and believe; that it may promote the lasting welfare of that country so dear to us all; and secure her freedom and happiness, is our most ardent wish."

#### SUPREMACY OF THE CONSTITUTION

##### COERCION OF STATES

- May 29*    **Preliminaries in Committee of the Whole.** Resolved, . . . that the national legislature ought to be empowered . . . to call forth the force of the Union against any member of the Union failing to fulfil its duty under the Articles thereof. Proposition in Virginia Plan.
- May 31*    **Madison:** Observed that the more he reflected on the use of force, the more he doubted the practicability, the justice and the efficacy of it, when applied to people collectively and not individually. A union of the states containing such an ingredient seemed to provide for its own destruction. The use of force against a state would look more like a declaration of war than an infliction of punishment; and would probably be considered by the party attacked as a dissolution of all previous

compacts by which it might be bound. He hoped that such a system would be framed as might render this recourse unnecessary, and moved that the clause be postponed.

This motion was agreed to, *nem. con.*

#### NEGATIVE ON STATE LAWS

**Preliminaries in Committee of the Whole.** Resolved, . . . that the national legislature ought to be empowered . . . to negative all laws passed by the several states, contravening in the opinion of the national legislature, the Articles of Union, or any treaty subsisting under the authority of the Union; . . . Proposition in Virginia Plan. May 29

C. Pinckney: Moved "that the national legislature should have authority to negative all laws which they should judge to be improper." He urged that such a universality of the power was indispensably necessary to render it effectual; that the states must be kept in due subordination to the nation; that if the states were left to act of themselves in any case, it would be impossible to defend the national prerogatives, however extensive they might be on paper; that the acts of Congress had been defeated by this means; nor had foreign treaties escaped repeated violations: that this universal negative was in fact the cornerstone of an efficient national government; that under the British government, the negative of the Crown had been found beneficial, and the *states* are more one nation now than the *colonies* were then. June 8

Madison: Seconded the motion. He could not but regard an indefinite power to negative legislative acts of the states as absolutely necessary to a perfect system. Experience had evinced a constant tendency in the states to encroach on the federal authority; to violate national treaties; to infringe the rights and interests of each other; to oppress the weaker party within their respective jurisdictions. A negative was the mildest expedient that could be devised for preventing these mischiefs. The existence of such a check would prevent attempts to commit them. Should no such precaution be engrafted, the



only remedy would be in an appeal to coercion. Was such a remedy eligible? Was it practicable? Could the national resources, if exerted to the utmost, enforce a national decree against Massachusetts, abetted, perhaps, by several of her neighbors? It would not be possible. A small proportion of the community, in a compact situation, acting on the defensive, and at one of its extremities, might at any time bid defiance to the national authority. Any government for the United States, formed on the supposed practicability of using force against the unconstitutional proceedings of the states, would prove as visionary and fallacious as the government of Congress. The negative would render the use of force unnecessary. The states could of themselves pass no operative act, any more than one branch of the legislature, where there are two branches, can proceed without the other. But in order to give the negative this efficacy, it must extend to all cases. A discrimination would only be a fresh source of contention between the two authorities. In a word, to recur to the illustrations borrowed from the planetary system, this prerogative of the general government is the great pervading principle that must control the centrifugal tendency of the states; which, without it, will continually fly out of their proper orbits, and destroy the order and harmony of the political system.

Williamson: Was against giving a power that might restrain the states from regulating their internal police.

Gerry: Could not see the extent of such a power, and was against every power that was not necessary. He thought a remonstrance against unreasonable acts of the states would restrain them. If it should not, force might be resorted to. He had no objection to authorize a negative to paper money and similar measures. When the Confederation was depending before Congress, Massachusetts was then for inserting the power of emitting paper money among the exclusive powers of Congress. He observed that the proposed negative would extend to the regulations of the militia, a matter on which the existence of the state might depend. The national legislature, with such a power, may enslave the states. Such an idea as

this will never be acceded to. It has never been suggested or conceived among the people. No speculative projector—and there are enough of that character among us, in politics as well as in other things—has, in any pamphlet or newspaper, thrown out the idea. The states, too, have different interests and are ignorant of each other's interests. The negative, therefore, will be abused. New states, too, having separate views from the old states, will never come into the Union. They may even be under some foreign influence; are they in such case to participate in the negative on the will of the other states?

Sherman: Thought the cases in which the negative ought to be exercised might be defined. He wished the point might not be decided till a trial at least should be made for that purpose.

Wilson: Would not say what modifications of the proposed power might be practicable or expedient. But however novel it might appear, the principle of it, when viewed with a close and steady eye, is right. There is no instance in which the laws say that the individual should be bound in one case and at liberty to judge whether he will obey or disobey in another. The cases are parallel. Abuses of the power over the individual persons may happen as well as over the individual states. Federal liberty is to the states what civil liberty is to private individuals; and states are not more unwilling to purchase it, by the necessary concession of their political sovereignty, than the savage is to purchase civil liberty by the surrender of the personal sovereignty, which he enjoys in a state of nature. A definition of the cases in which the negative should be exercised is impracticable. A discretion must be left on one side or the other—will it not be most safely lodged on the side of the national government? Among the first sentiments expressed in the first Congress, one was that Virginia is no more, that Massachusetts is no more, that Pennsylvania is no more, etc.—we are now one nation of brethren—we must bury all local interests and distinctions. This language continued for some time. The tables at length began to turn. No sooner were the state governments formed than their jealousy and ambition

began to display themselves; each endeavored to cut a slice from the common loaf, to add to its own morsel, till at length the Confederation became frittered down to the impotent condition in which it now stands. Review the progress of the Articles of Confederation through Congress, and compare the first and last draught of it. To correct its vices is the business of this convention. One of its vices is the want of an effectual control in the whole over its parts. What danger is there that the whole will unnecessarily sacrifice a part? But reverse the case, and leave the whole at the mercy of each part, and will not the general interest be continually sacrificed to local interests?

Dickinson: Deemed it impossible to draw a line between the cases proper and improper for the exercise of the negative. We must take our choice of two things. We must either subject the states to the danger of being injured by the power of the national government, or the latter to the danger of being injured by that of the states. He thought the danger greater from the states. To leave the power doubtful would be opening another spring of discord, and he was for shutting as many of them as possible.

Bedford: In answer to his colleague's question, where would be the danger to the states from this power, would refer him to the smallness of his own state, which may be injured at pleasure without redress. It was meant, he found, to strip the small states of their equal right of suffrage. In this case, Delaware would have about one-ninetieth for its share in the general councils, whilst Pennsylvania and Virginia would possess one-third of the whole. Is there no difference of interests, no rivalry of commerce, of manufactures? Will not these large states crush the small ones, whenever they stand in the way of their ambitious or interested views? This shows the impossibility of adopting such a system as that on the table, or any other founded on a change in the principle of representation. And after all, if a state does not obey the law of the new system, must not force be resorted to as the only ultimate remedy in this as in any other system? It seems

as if Pennsylvania and Virginia, by the conduct of their deputies, wished to provide a system in which they would have an enormous and monstrous influence. Besides, how can it be thought that the proposed negative can be exercised? Are the laws of the states to be suspended in the most urgent cases until they can be sent seven or eight hundred miles and undergo the deliberation of a body who may be incapable of judging of them? Is the national legislature, too, to sit continually in order to revise the laws of the states?

Madison: Observed that the difficulties which had been started were worthy of attention, and ought to be answered before the question was put. The case of laws of urgent necessity must be provided for by some emanation of the power from the national government into each state, so far as to give a temporary assent at least. This was the practice in the royal colonies before the Revolution, and would not have been inconvenient if the supreme power of negating had been faithful to the American interest, and had possessed the necessary information. He supposed that the negative might be very properly lodged in the Senate alone, and that the more numerous and expensive branch therefore might not be obliged to sit constantly. He asked Mr. Bedford, what would be the consequence to the small states of a dissolution of the Union, which seemed likely to happen if no effectual substitute was made for the defective system existing?—and he did not conceive any effectual system could be substituted on any other basis than that of a proportional suffrage. If the large states possessed the avarice and ambition with which they were charged, would the small ones in their neighborhood be more secure when all control of a general government was withdrawn?

Butler: Was vehement against the negative in the proposed extent, as cutting off all hope of equal justice to the distant states. The people there would not, he was sure, give it a hearing.

On the Pinckney-Madison motion: Yeas 3 (Massachusetts, Pennsylvania, Virginia); nays 7 (Connecticut, New York,

New Jersey, Maryland, North Carolina, South Carolina, Georgia); divided 1 (Delaware).

*June 19*    **Fundamentals in Convention.** Resolved, that the national legislature ought to be empowered . . . to negative all laws passed by the several states contravening in the opinion of the national legislature, the Articles of Union, or any treaties subsisting under the authority of the Union. Sixth resolution, Committee of the Whole.

*July 17*    G. Morris: Opposed this power as likely to be terrible to the states, and not necessary if sufficient legislative authority should be given to the general government.

Sherman: Thought it unnecessary, as the courts of the states would not consider as valid any law contravening the authority of the Union, and which the legislature would wish to be negated.

L. Martin: Considered the power as improper and inadmissible. Shall all the laws of the states be sent up to the general legislature before they shall be permitted to operate?

Madison: Considered the negative on the laws of the states as essential to the efficacy and security of the general government. The necessity of a general government proceeds from the propensity of the states to pursue their particular interests in opposition to the general interest. This propensity will continue to disturb the system unless effectually controlled. Nothing short of a negative on their laws will control it. They will pass laws which will accomplish their injurious objects before they can be repealed by the general legislature, or set aside by the national tribunals. Confidence cannot be put in the state tribunals as guardians of the national authority and interests. In all the states, these are more or less dependent on the legislatures. In Georgia they are appointed annually by the legislature. In Rhode Island the judges who refused to execute an unconstitutional law were displaced, and others substituted, by the legislature, who would be the willing instruments of the wicked and arbitrary plans of their masters. A power of negating the improper

laws of the states is at once the most mild and certain means of preserving the harmony of the system. Its utility is sufficiently displayed in the British system. Nothing could maintain the harmony and subordination of the various parts of the empire, but the prerogative by which the Crown stifles in the birth every act of every part tending to discord or encroachment. It is true the prerogative is sometimes misapplied, through ignorance or partiality to one particular part of the empire, but we have not the same reason to fear such misapplications in our system. As to the sending all laws up to the national legislature, that might be rendered unnecessary by some emanation of the power into the states, so far at least as to give a temporary effect to laws of immediate necessity.

G. Morris: Was more and more opposed to the negative. The proposal of it would disgust all the states. A law that ought to be negatived will be set aside in the judiciary department; and if that security should fail, may be repealed by a national law.

Sherman: Such a power involves a wrong principle, to wit, that a law of a state contrary to the Articles of the Union would, if not negatived, be valid and operative.

C. Pinckney: Urged the necessity of the negative.

On the question to give the national legislature a negative on state laws: Yeas 3 (Massachusetts, Virginia, North Carolina); nays 7 (Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, South Carolina, Georgia).

C. Pinckney: Moved to add, as an additional power to be vested in the legislature of the United States, "to negative all laws passed by the several states interfering, in the opinion of the legislature, with the general interests and harmony of the Union; provided that two-thirds of the members of each house assent to the same." This principle, he observed, had formerly been agreed to. He considered the precaution as essentially necessary. The objection drawn from the predominance of the large states had been removed by the equality established in the Senate.

*Aug. 23*

Broom: Seconded the proposition.

Sherman: Thought it unnecessary; the laws of the general government being supreme and paramount to the state laws, according to the plan as it now stands.

Madison: Proposed that it should be committed. He had been from the beginning a friend to the principle; but thought the modification might be made better.

Mason: Wished to know how the power was to be exercised. Are all laws whatever to be brought up? Is no road nor bridge to be established without the sanction of the general legislature? Is this to sit constantly in order to receive and revise the state laws? He did not mean, by these remarks, to condemn the expedient; but he was apprehensive that great objections would lie against it.

Williamson: Thought it unnecessary; and having been already decided, a revival of the question was waste of time.

Wilson: Considered this as the keystone wanted to complete the wide arch of government we are raising. The power of self-defense had been urged as necessary for the state governments. It was equally necessary for the general government. The firmness of judges is not of itself sufficient. Something further is requisite. It will be better to prevent the passage of an improper law than to declare it void when passed.

Rutledge: If nothing else, this alone would damn, and ought to damn, the Constitution. Will any state ever agree to be bound hand and foot in this manner? It is worse than making mere corporations of them, whose by-laws would not be subject to this shackle.

Ellsworth: Observed that the power contended for would require, either that all laws of the state legislatures should, previously to their taking effect, be transmitted to the general legislature, or be repealable by the latter; or that the state executives should be appointed by the general government, and have a control over the state laws. If the last was meditated, let it be declared.

C. Pinckney: Declared that he thought the state executives

ought to be so appointed, with such a control; and that it would be so provided if another convention should take place.

G. Morris: Did not see the utility or practicability of the proposition of Mr. Pinckney, but wished it to be referred to the consideration of a committee.

Langdon: Was in favor of the proposition. He considered it as resolvable into the question, whether the extent of the national Constitution was to be judged of by the general or the state governments.

On the question for commitment: Yeas 5 (New Hampshire, Pennsylvania, Delaware, Maryland, Virginia); nays 6 (Massachusetts, Connecticut, New Jersey, North Carolina, South Carolina, Georgia).

C. Pinckney: Then withdrew his proposition.

#### REVISED SUPREMACY CLAUSE

**Fundamentals in Convention.** L. Martin: Moved the following resolution, "That the legislative acts of the United States made by virtue and in pursuance of the Articles of Union, and all treaties made and ratified under the authority of the United States, shall be the supreme law of the respective states, as far as those acts or treaties shall relate to the said states, or their citizens and inhabitants; and that the judiciaries of the several states shall be bound thereby in their decisions, anything in the respective laws of the individual states to the contrary notwithstanding"; which was agreed to, *nem. con.* July 17

**Agreements Referred to Committee of Detail.** Resolved, that the legislative acts of the United States, made by virtue and in pursuance of the Articles of Union, and all treaties made and ratified under the authority of the United States, shall be the supreme law of the respective states, as far as those acts or treaties shall relate to the said states, or their citizens and inhabitants; and that the judiciaries of the several states shall be bound thereby in their decisions, any thing in the July 26



respective laws of the individual states to the contrary notwithstanding. Seventh resolution on fundamentals.

- Aug. 6*     **Details in Convention.** The acts of the legislature of the United States made in pursuance of this Constitution, and all treaties made under the authority of the United States, shall be the supreme law of the several states, and of their citizens and inhabitants; and the judges in the several states shall be bound thereby in their decisions, any thing in the constitutions or laws of the several states to the contrary notwithstanding. Article VIII, Committee of Detail.
- Aug. 23*     Rutledge: Moved to amend Article VIII to read as follows: "This Constitution, and the laws of the United States made in pursuance thereof, and all the treaties made under the authority of the United States, shall be the supreme law of the several states and of their citizens and inhabitants; and the judges of the several states shall be bound thereby in their decisions, any thing in the constitutions or laws of the several states to the contrary notwithstanding"; which was agreed to, *nem. con.*
- Aug. 25*     Madison and G. Morris: Moved that Article VIII be reconsidered; and after the words "all treaties made," were inserted, *nem. con.*, the words "or which shall be made." This insertion was meant to obviate all doubt concerning the force of treaties pre-existing, by making the words "all treaties made" to refer to them, as the words inserted would refer to future treaties.
- Sept. 12*     **Conclusions in Convention.** This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding. Article VI, paragraph 2. Report of Committee on Style and Arrangement.
- Sept. 17*     Article VI, paragraph 2, as reported by the Committee on Style

and Arrangement, became a part of the completed Constitution approved in Convention this day.

## OFFICIAL OATH

**Preliminaries in Committee of the Whole.** Resolved, that the legislative, executive, and judiciary powers within the several states ought to be bound by oath to support the Articles of Union. Proposition in Virginia Plan. *May 29*

The fourteenth resolution, "requiring oath from the state officers to support the national government," was postponed, after a short, uninteresting conversation: Yeas 6 (Connecticut, New Jersey, Maryland, Virginia, South Carolina, Georgia); nays 4 (New York, Pennsylvania, Delaware, North Carolina); divided 1 (Massachusetts). *June 5*

Sherman: Opposed it [the fourteenth resolution], as unnecessarily intruding into the state jurisdictions. *June 11*

Randolph: Considered it necessary to prevent that competition between the national Constitution and laws, and those of the particular states, which had already been felt. The officers of the states are already under oath to the states. To preserve a due impartiality, they ought to be equally bound to the national government. The national authority needs every support we can give it. The executive and judiciary of the states, notwithstanding their nominal independence on the state legislatures, are in fact so dependent on them that unless they be brought under some tie to the national system, they will always lean too much to the state systems, whenever a contest arises between the two.

Gerry: Did not like the clause. He thought there was as much reason for requiring an oath of fidelity to the states from national officers as vice versa.

L. Martin: Moved to strike out the words requiring such an oath from the state officers, viz., "within the several states," observing that if the new oath should be contrary to that already taken by them, it would be improper; if coincident, the oaths already taken will be sufficient.

On L. Martin's motion: Yeas 4 (Connecticut, New Jersey, Delaware, Maryland); nays 7 (Massachusetts, New York, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia).

On the fourteenth Virginia resolution: Yeas 6 (Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia); nays 5 (Connecticut, New York, New Jersey, Delaware, Maryland).

*June 19* **Fundamentals in Convention.** Resolved, that the legislative, executive, and judiciary powers within the several states ought to be bound by oath to support the Articles of Union. Eighteenth resolution, Committee of the Whole.

*July 23* Williamson: Suggests that a reciprocal oath should be required from the national officers, to support the governments of the states.

Gerry: Moved to insert, as an amendment, that the oath of the officers of the national government also should extend to the support of the national government, which was agreed to, *nem. con.*

Wilson: Said he was never fond of oaths, considering them as a left-handed security only. A good government did not need them, and a bad one could not or ought not to be supported. He was afraid they might too much trammel the members of the existing government, in case future alterations should be necessary; and prove an obstacle to the seventeenth resolution, just agreed to.

Gorham: Did not know that oaths would be of much use, but could see no inconsistency between them and the seventeenth resolution, or any regular amendment of the Constitution. The oath could only require fidelity to the existing Constitution. A constitutional alteration of the Constitution could never be regarded as a breach of the Constitution, or of any oath to support it.

Gerry: Thought, with Mr. Gorham, there could be no shadow of inconsistency in the case. Nor could he see any other harm that could result from the resolution. On the other side, he thought one good effect would be produced by it. Hitherto

the officers of the two governments had considered them as distinct from, and not as part of, the general system, and had, in all cases of interference given a preference to the state governments. The proposed oath will cure that error.

The resolution (the eighteenth) was agreed to, *nem. con.*

**Agreement Referred to Committee of Detail.** Resolved, that the legislative, executive, and judiciary powers within the several states and of the national government ought to be bound, by oath, to support the Articles of Union. Twentieth resolution on fundamentals. *July 26*

**Details in Convention.** The members of the legislatures, and the executive and judicial officers of the United States and of the several states shall be bound by oath to support this Constitution. Article XX, Committee of Detail. *Aug. 6*

Article XX was then taken up. The words "or affirmation" were added after "oath." *Aug. 30*

**Conclusions in Convention.** The senators and representatives beforementioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath, or affirmation, to support this Constitution. . . . Article VI, paragraph 3. Report of Committee on Style and Arrangement. *Sept. 12*

Article VI, paragraph 3, as reported by the committee, was included in the completed Constitution approved on this day. *Sept. 17*

#### SEPARATION OF POWERS

**Preliminaries in Committee of the Whole.** Resolved, that the Articles of Confederation ought to be so corrected and enlarged as to accomplish the objects proposed by their institution; namely, "common defense, security of liberty, and general welfare." Proposition in Virginia Plan. *May 29*

Randolph: Moved, on the suggestion of Mr. G. Morris, that the first of his propositions, to wit: "Resolved, that the Ar- *May 30*

ticles of Confederation ought to be so corrected and enlarged as to accomplish the objects proposed by their institution; namely, common defense, security of liberty, and general welfare" should mutually be postponed in order to consider the three following:

1. That a union of the states merely federal will not accomplish the objects proposed by the Articles of Confederation, namely, common defense, security of liberty, and general welfare.

2. That no treaty or treaties among the whole or part of the states as individual sovereignties, would be sufficient.

3. That a *national* government ought to be established, consisting of a *supreme* legislative, executive, and judiciary. The motion for postponing was seconded by Mr. G. Morris, and unanimously agreed to.

Some verbal criticisms were raised against the first proposition, and it was agreed, on motion of Mr. Butler, seconded by Mr. Randolph, to pass on to the third, which underwent a discussion, less, however, on its general merits than on the force and extent of the particular terms *national* and *supreme*.

C. Pinckney: Wished to know of Mr. Randolph whether he meant to abolish the state governments altogether.

Randolph: Replied that he meant by these general propositions merely to introduce the particular ones which explained the outlines of the system he had in view.

Butler: Said he had not made up his mind on the subject, and was open to the light which discussion might throw on it. After some general observations, he concluded with saying that he had opposed the grant of powers to Congress heretofore because the whole power was vested in one body. The proposed distribution of the powers with different bodies changed the case, and would induce him to go great lengths.

C. C. Pinckney: Expressed a doubt whether the act of Congress recommending the Convention, or the commissions of the deputies to it, would authorize a discussion of a system

founded on different principles from the federal Constitution.

Gerry: Seemed to entertain the same doubt.

G. Morris: Explained the distinction between a *federal* and a *national, supreme* government; the former being a mere compact resting on the good faith of the parties; the latter having a complete and *compulsive* operation. He contended that in all communities there must be one supreme power, and one only.

Mason: Observed not only that the present Confederation was deficient in not providing for coercion and punishment against delinquent states, but argued very cogently that punishment could not in the nature of things be executed on the states collectively, and therefore that such a government was necessary as could directly operate on individuals, and would punish those only whose guilt required it.

Sherman: Admitted that the Confederation had not given sufficient power to Congress, and that additional powers were necessary, particularly that of raising money, which he said would involve many other powers. He admitted also that the general and particular jurisdictions ought in no case to be concurrent. He seemed, however, not to be disposed to make too great inroads on the existing system; intimating, as one reason, that it would be wrong to lose every amendment by inserting such as would not be agreed to by the states.

It was moved by Read, and seconded by C. C. Pinckney, to postpone the third proposition last offered by Randolph, viz., "that a national government ought to be established, consisting of a supreme legislative, executive, and judiciary," in order to take up the following, viz.: "Resolved, that, in order to carry into execution the design of the states in forming this Convention, and to accomplish the objects proposed by the Confederation, a more effective government, consisting of a legislative, executive, and judiciary, ought to be established." The motion to postpone for this purpose was

lost: Yeas 4 (Massachusetts, Connecticut, Delaware, South Carolina); nays 4 (New York, Pennsylvania, Virginia, North Carolina).

On the question, as moved by Butler, on the third proposition, it was resolved, in Committee of Whole, "that a national government ought to be established, consisting of a supreme legislative, executive, and judiciary": Yeas 6 (Massachusetts, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina); nays 1 (Connecticut); divided 1 (New York).

*June 19* **Fundamentals in Convention.** Resolved, that it is the opinion of this committee that a national government ought to be established, consisting of a supreme legislative, executive, and judiciary. First resolution, Committee of the Whole.

Wilson: Observed that by a national government, he did not mean one that would swallow up the state governments, as seemed to be wished by some gentlemen. He was tenacious of the idea of preserving the latter. He thought, contrary to the opinion of Col. Hamilton, that they might not only subsist, but subsist on friendly terms with the former. They were absolutely necessary for certain purposes, which the former could not reach. All large governments must be subdivided into lesser jurisdictions. As examples he mentioned Persia, Rome, and particularly the divisions and subdivisions of England by Alfred.

Hamilton: Coincided with the proposition as it stood in the report. He had not been understood yesterday. By an abolition of the states, he meant that no boundary could be drawn between the national and state legislatures; that the former must therefore have indefinite authority. If it were limited at all, the rivalry of the states would gradually subvert it. Even as corporations, the extent of some of them, as Virginia, Massachusetts, etc., would be formidable. As *states*, he thought they ought to be abolished. But he admitted the necessity of leaving in them subordinate jurisdictions. The examples of Persia and the Roman Empire, cited by Mr. Wilson, were, he thought, in favor of his doctrine, the great powers delegated to the satraps and proconsuls having fre-

quently produced revolts and schemes of independence. King: Wished, as everything depended on this proposition, that no objection might be improperly indulged against the phraseology of it. He conceived that the import of the term "states," "sovereignty," "*national*," "federal," had been often used and implied in the discussions inaccurately and delusively. The states were not "sovereigns" in the sense contended for by some. They did not possess the peculiar features of sovereignty—they could not make war, nor peace, nor alliances, nor treaties. Considering them as political beings, they were dumb, for they could not speak to any foreign sovereign whatever. They were deaf, for they could not hear any propositions from such sovereign. They had not even the organs or faculties of defense or offense, for they could not of themselves raise troops or equip vessels for war. On the other side, if the union of the states comprises the idea of a Confederation, it comprises that also of consolidation. A union of the states is a union of the men composing them, from whence a *national* character results to the whole. Congress can act alone without the states; they can act, and their acts will be binding, against the instructions of the states. If they declare war, war is *de jure* declared; captures made in pursuance of it are lawful; no acts of the states can vary the situation or prevent the judicial consequences. If the states, therefore, retained some portion of their sovereignty, they had certainly divested themselves of essential portions of it. If they formed a confederacy in some respects, they formed a nation in others. The Convention could clearly deliberate on and propose any alterations that Congress could have done under the federal Articles. And could not Congress propose, by virtue of the last article, a change in any article whatever—and as well that relating to the equality of suffrage as any other? He made these remarks to obviate some scruples which had been expressed. He doubted much the practicability of annihilating the states; but thought that much of their power ought to be taken from them.



L. Martin: Said he considered that the separation from Great Britain placed the thirteen states in a state of nature towards each other; that they would have remained in that state till this time but for the Confederation; that they entered into the Confederation on the footing of equality; that they met now to amend it, on the same footing; and that he could never accede to a plan that would introduce an inequality, and lay ten states at the mercy of Virginia, Massachusetts and Pennsylvania.

Wilson: Could not admit the doctrine that when the colonies became independent of Great Britain, they became independent also of each other. He read the Declaration of Independence, observing thereon that the *United Colonies* were declared to be free and independent states; and inferring that they were independent, not *individually* but *unitedly*, and that they were confederated, as they were independent states.

Hamilton: Assented to the doctrine of Mr. Wilson. He denied the doctrine that the states were thrown into a state of nature. He was not yet prepared to admit the doctrine that the Confederacy could be dissolved by partial infractions of it. He admitted that the states met now on an equal footing, but could see no inference from that against concerting a change of the system in this particular. He took this occasion of observing, for the purpose of appeasing the fear of the small states, that two circumstances would render them secure under a national government in which they might lose the equality of rank which they now held: one was the local situation of the three largest states, Virginia, Massachusetts, and Pennsylvania. They were separated from each other by distance of place, and equally so, by all the peculiarities which distinguish the interests of one state from those of another. No combination, therefore, could be dreaded. In the second place, as there was a gradation in the states, from Virginia, the largest, down to Delaware, the smallest, it would always happen that ambitious combinations among a few states might and would be counteracted by defensive

combinations of greater extent among the rest. No combination has been seen among the large counties, merely as such, against lesser counties. The more close the union of the states, and the more complete the authority of the whole, the less opportunity will be allowed to the stronger states to injure the weaker.

- Ellsworth: Seconded by Gorham, moves to alter it [committee report] so as to run "that the government of the United States ought to consist of a supreme legislative, executive, and judiciary." This alteration, he said, would drop the word *national*, and retain the proper title "the United States." He could not admit the doctrine that a breach of any of the federal articles could dissolve the whole. It would be highly dangerous not to consider the Confederation as still subsisting. He wished, also, the plan of the Convention to go forth as an amendment of the Articles of the Confederation, since, under this idea the authority of the legislatures could ratify it. If they are unwilling, the people will be so too. If the plan goes forth to the people for ratification, several succeeding conventions within the states would be unavoidable. He did not like these conventions. They were better fitted to pull down than to build up constitutions. June 20
- Randolph: Did not object to the change of expression, but apprised the gentleman who wished for it, that he did not admit it for the reasons assigned; particularly that of getting rid of a reference to the people for ratification.
- The motion of Ellsworth was acquiesced in, *nem. con.*
- Agreement Referred to Committee of Detail. Resolved, that the government of the United States ought to consist of a supreme legislative, judiciary, and executive. First resolution on fundamentals. July 26
- Details in Convention. The government shall consist of supreme legislative, executive, and judicial powers. Article II, Committee of Detail. Aug. 6
- Article II was agreed to, *nem. con.* Aug. 7

*Sept. 12*    **Conclusions in Convention.** All legislative powers herein granted shall be vested in a Congress of the United States. . . . Article I, Section 1. Report of Committee on Style and Arrangement.

The executive power shall be vested in a President of the United States of America. Article II, Section 1, first sentence. Report of Committee on Style and Arrangement.

The judicial power of the United States, both in law and equity, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. Article III, Section 1, first sentence. Report of Committee on Style and Arrangement.

*Sept. 17*    These provisions for the separation of powers were included in the completed Constitution approved this day.

#### JUDICIAL EXPLICATIONS

Jacobson v. Massachusetts, 197 U.S. 11 (1905)

Texas v. White, 7 Wall. 700 (1869)

Dorr v. United States, 195 U.S. 138 (1904)

Marbury v. Madison, 1 Cranch 137 (1803)

Ableman v. Booth, 21 How. 506 (1859)

Schechter Poultry Corporation v. United States, 295 U.S. 495 (1935)

#### SURVEY OF PROCEEDINGS ON OUTSTANDING FEATURES OF THE FEDERAL SYSTEM

[Insertion by Compiler]

**The Union and the States.** Our federal system, composed of commonwealths exercising reserved powers and a union of such commonwealths with extensive delegated powers, must have the relations between these political entities clearly defined. The solution of this problem is largely the result of experience under the Confederation and of implications arising from the nature of our federal system. For instance, the Constitution provides for cooperation between state and na-

tion in its amendment. It prescribes functions and powers which the nation alone may exercise; it provides that the nation shall guarantee a republican government and internal security to the states; it imposes prohibitions on the states safeguarding the Union and prohibitions on the Union for the protection of the states; it secures the settlement of controversies between states in the highest tribunal of the land; it establishes interstate relations that guarantee the privileges and immunities of citizens of each state when residing or transacting business in another state; it provides that the acts, records, and judicial proceedings of each state shall be recognized by every other state when properly established; it gives each state the right to extradite from any other state fugitives from justice found in the latter. All these are matters of imperative importance in a federal government. As worked out in the Constitution, they have not only contributed to the establishment and smooth operation of an indestructible Union composed of indestructible states, but they have made citizenship a national privilege and responsibility, and prevented the limitations of alienage that might hamper the activities of citizens beyond the boundaries of the state to which they owe allegiance.

**Safeguards of the Constitution.** Popular government needs not only power to promote the general welfare, which furnishes a test of its efficiency, but, because this power may be misused, it also needs quite as many safeguards that provide for the safety of government, some of which are designed to make it responsive to the people it serves, others to protect individuals against unjust and oppressive governmental action. Practices brought from the motherland as birthrights by the colonial founders of American institutions were developed into the two types of safeguards sketched in Chapter 19, one appropriately called political, whose efficacy depends upon the relation between principal and agent in government—between electorate and representative, in other words. The other type of safeguard arising from these Americanized English practices has acquired a character that can be best described by the word

"imperative." They give to oppressed persons the protection of sovereign mandates made effective by judicial interposition.

All safeguards inserted in the Constitution by the Philadelphia Convention were the product of the representative system that began in England during the reign of King John (1213). That system gave to Britain a representative organ, the House of Commons, whose control of government as expressed in the Bill of Rights was complete a hundred years before the framing of our Constitution, and whose paramount authority today is based on the Parliament Act of 1911. That steady growth of power was inevitably expressed in political control of fiscal matters and in restraints on holders of high office, all of which were forerunners of corresponding safeguards in our constitutional system.

In all of these processes of political control, Britain has improved upon our best developments; but in the establishment and protection of personal rights, our federal system shows its greatest excellence. Totalitarian states tend to base their treatment of citizens on vague conceptions of duty to the government, impossible to define legally. The glory of the American constitutional system is that it makes government the servant of the people, and by the creation of personal rights, the protection of which is entrusted to an independent judiciary, safeguards the humblest person against tyranny.

**Preamble.** The preamble is both the title and the enacting clause of the Constitution. Unlike the preamble of certain state constitutions, which are prayers of thanksgiving and supplication combined, that introducing the federal Constitution enumerates the governmental objectives of the political sovereign, and proclaims the will of that sovereign concerning provisions of the fundamental law deemed necessary for the accomplishment of these objectives. It creates no organs; it grants no powers; it imposes no limitations; it merely functions as a conduit from the sovereign people to public agencies of authority to exercise delegated powers within specified territorial areas. It is a model of drafting skill in its expression of

fundamental principles underlying American constitution-making.

Consideration of a preamble had to await solutions of problems concerning the nature of the Union, the machinery of government, and principles that should guide the development of federal powers. Deliberations on these difficult questions culminated in agreements on fundamentals which were referred to the Committee of Detail on July 26. That Committee's recommended preamble and style of government came before the Convention on August 6, and was approved, *nem. con.*, August 7. The Committee on Style and Arrangement redrafted and unified these provisions to remove a conflict arising from the subsequent adoption of a provision for the creation of the new federal system on the ratification of nine states.

**Supremacy of the Constitution.** Defects in the Articles of Confederation had convinced promoters of "a more perfect Union" that the problem of problems in the Philadelphia Convention was how to make the nation paramount in the exercise of powers delegated to it, and how to preserve the independence of states in the exercise of powers reserved by them. Early in the proceedings of the Committee of the Whole, a national government consisting of a supreme legislative, executive, and judiciary was made the objective of future developments, but pertinent experiences in English and American judicial history were not drawn upon by the Virginia delegation for drafting their resolutions on this subject, submitted to the Convention as soon as it was organized for business. Strange to say, instead of relying on judicial processes already used in both countries for adjudicating conflicting laws, they proposed that the dangerous political power of negating state laws be vested in the national legislature, and the more dangerous quasi-military power of coercing recalcitrant states be vested in the Union. Madison's penetrating analysis of the power to coerce states left it nothing to stand on.

It is instructive to follow the deliberations that lead from

the un-American negative on state laws by Congress to the unique vindication of the supreme law by the judiciary. No specific provision confers this power, but the logic of developments in convention is axiomatic. The powers and limitations of our federal system cannot be made effective for the promotion of public welfare and the protection of personal rights without a supreme law consistently interpreted and finally applied by a Supreme Court detached from political control and technically equipped to adjust a living Constitution to changing conditions on principles embedded in that Constitution and its sources. When Chief Justice Hughes said, "We are under a Constitution, but the Constitution is what the judges say it is," he stressed a fact forbidding the false implication that the judicial expansion of the supreme law should be entrusted to a tribunal whose decisions are merely expressions of political expediency.<sup>2</sup>

**Separation of Powers.** Deliberations on separation of powers do not show any differences of opinion about the need for making it a distinctive feature of the federal system. That had been proved by colonial experience, by constitutional developments in the original states, and by abuses of early state legislatures in disregard of the doctrine. Indeed, during the formative period of our national history, the writings of Locke and of Montesquieu were fruitful incubators of the political principles supporting this doctrine that were generally accepted by the founders. This background explains why the merits of the doctrine are not considered in the debate taken from Madison's Notes. That debate reveals also the failure of delegates to base the security of states as independent political entities in their proper sphere on features of the federal system already outlined. Unending fears that these indispensable historic units might somehow be destroyed by the new developments made emphasis on that phase inevitable in discussions of the problem. No prophet among them could foresee the

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<sup>2</sup> For a clarifying treatment of the problem of judicial review, see William Anderson's *American Government*, Chapter 10.

establishment "of an indestructible Union, composed of indestructible states."

But provisions for the separation of powers that the above-mentioned deliberations evolved require supplementary aids for the accomplishment of their purpose, some embodied in the Constitution itself, others implied in its nature, collectively known as the system of checks and balances. One of these, the judicial power to invalidate laws, has already been explained. Preceding drafting processes reveal others. Separation of powers so fortified, as expanded by judicial interpretation, is the American method of creating and supporting a new form of representative government—the presidential—in contradistinction to the older parliamentary form.

#### CONTEMPORARY EXPLICATIONS

The Federalist, Nos. 1–22; 47–51; 84–85





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